



**Cameras and live text-based communication in the
Scottish courts: a consultation**

**Issued by the Judicial Office for
Scotland on behalf of the Lord
President and the Review Group on
25 October 2013**

Contents

1. Introduction	3
2. Principles and definitions	5
3. Contempt of Court	6
4. European Convention on Human Rights and Fundamental Freedoms.....	7
5. Scotland.....	8
6. England and Wales	17
7. UK Supreme Court.....	18
8. European Court of Human Rights	20
9. International Criminal Tribunal for the former Yugoslavia (ICTY).....	20
10. European Civil Law Jurisdictions.....	23
11. United States of America.....	24
12. New Zealand	31
13. South Africa	33
14. Australia.....	34
15. Canada	37
16. Discussion	40
17. Consultation Questions	54
Appendix I: Terms of reference.....	59
Appendix II: Membership and Support of the Review Group	60
Appendix III: Television in the Courts Notice on 6 th August 1992	61
Appendix IV: Television in the Courts Notice on 23 rd January 2012	62
Appendix V: Timeline of permissions granted in Scotland.....	63
Appendix VI: UK Supreme Court Policy on LTBC	65
Appendix VII: California State Rules on Photographing, recording, and broadcasting in court	66
Appendix VIII: New Zealand In-Court Media Coverage Guidelines 2012	71
Appendix IX: Bibliography	81
Appendix X: Consultation Response Form	83

1. Introduction

- 1.1 On 18 October 2012, the Lord President announced that he had commissioned a judicially led group to review the current policy on recording and broadcasting proceedings in court.
- 1.2 The review was thought necessary because it had been more than 20 years since Lord President Hope had issued guidance on the subject and, whilst that guidance had worked well, the use of a case-by-case approach to consider requests for filming required to be revisited.
- 1.3 After the review was announced, the Lord President decided to extend its remit to include an examination of the position in relation to the use of live, text-based communications (LTBC) from court. The terms of reference given to the review are at Appendix I.
- 1.4 The Review Group first met on 24 January and has met on a further three occasions to conduct the review. Members examined information on practice and experience in recording and broadcasting court proceedings in Scotland and other jurisdictions. They considered existing guidance in Scotland and elsewhere.
- 1.5 The review was carried out in the context of an acceptance of the importance of the principle of open justice, recognising however that its facilitation through media sources should not pose an unacceptable risk to the administration of justice.

- 1.6 The Review Group noted that the issues involved might affect a wide range of interested parties. This Consultation Paper has been drafted and issued by the Judicial Office for Scotland on behalf of the Review Group, in order to elicit those parties' views before recommendations are made to the Lord President

- 1.7 This Consultation Paper sets out: the principles involved and working definitions on which the review group have proceeded; the existing position and experience in Scotland; and experiences in other jurisdictions. It concludes with an analysis of issues involved in allowing different modes of media in the courts.

2. Principles and definitions

- 2.1 'Open Justice': the principle that proceedings ought to be open to the public. It is central to commanding public confidence in the legal system. The useful and often quoted tenet is that "*Justice should not only be done, but should manifestly and undoubtedly be seen to be done.*"¹ Along with the holding of trials in public and allowing access to court documents, this principle can be conceived as including public education on the legal system and the operation of the courts.
- 2.2 'Administration of Justice': the purpose of court proceedings - to conduct a fair hearing in order to deliver a just outcome. As highlighted by Lord Atkinson in *Scott v Scott*, open justice is a protection for the '*pure, impartial and efficient administration of justice*'²
- 2.3 'Cameras in court': this term is used to include all recording and broadcasting of images and, unless stated otherwise, sound from court. There are different forms of filming court proceedings and the purpose thereof, for example, live streaming, news reporting and documentary film-making.

¹ *R v Sussex Justices* KB (1924)

² Viscount Haldane, L.C., *Scott v Scott* [1913] AC 417

2.4 'Live, text-based communication': this is used to include all platforms and formats of communicating directly from court using text. The review recognised the differences in the immediacy, conciseness and level of editorial control involved in different forms of LTBC.

3. Contempt of Court

3.1 The Contempt of Court Act 1981 creates a strict liability offence for the publication of material which creates a substantial risk that the course of justice in the relevant proceedings would be seriously impeded or prejudiced. A limited number of defences to the offence are available to publishers, namely that the material comprised a fair and accurate contemporary report or discussion of public affairs, or that the publication of the potentially prejudicial material was made innocently. This last defence applies only where the publisher did not know and had no reason to suspect that the proceedings which featured in the material were active.

3.2 The Contempt of Court Act applies to LTBC.

4. European Convention on Human Rights and Fundamental Freedoms

4.1 In general, the organisation and form of trials is a matter for national courts. The European Court of Human Rights ('ECtHR') accords a large measure of appreciation to their views. As yet, it has not provided authoritative guidance on the recording and broadcast of court proceedings. In individual cases, the national court must decide whether Convention rights are engaged. It must ensure that the right to a fair trial is upheld (Article 6). It may also require to balance the right to privacy (Article 8) against the right to freedom of expression (Article 10).

4.2 Because traditionally Article 10 has not been thought to confer a right to obtain information, but only to impart information or to receive information freely imparted, the view has been taken that a refusal to permit broadcasting of proceedings does not engage Article 10³. Although the ECtHR has recognised an extension to Article 10 to confer a right to obtain "information of general interest"⁴, two conditions must be satisfied: (a) the information is sought on a matter of public importance, and (b) it is sought by a body whose purpose is informing the public of such matters. That case has been applied by the High Court of Justiciary to permit the media to publish photographs which were productions in a criminal trial⁵.

³ *BBC, Petitioners* (No 2) 2000 JC 521; Lady Justice Smith, *Shipman Inquiry*, 25 October 2001; Lord Hutton, *Investigation in to the Circumstances surrounding the death of Dr David Kelly*, 5 August 2003

⁴ *Tarasag A Szabadsagjogokert v Hungary* (2011) 53 EHRR 130

⁵ *BBC, Petitioners* 2012 SLT 476

5. Scotland

Cameras in Court

- 5.1 Prior to 1992 television cameras were not allowed within the precincts of the court. This effectively banned the recording and broadcasting of court proceedings. The origin of that “rule” is unclear. It did not have a legislative underpinning and was departed from in a Notice dated 6 August 1992. Lord President Hope issued directions about the practice to be followed with regard to requests by broadcasting authorities for permission to televise proceedings in the Court of Session and High Court of Justiciary. A copy of that Notice is at Appendix III.
- 5.2 That Notice survived until 2012 when it was varied, for a trial period, by Lord President Hamilton. That variation provided that filming could be done without the consent of all parties, but only where the production company and broadcaster provided the presiding Judge with an undertaking that the final broadcast would not identify those who had not consented to the filming. A copy of that Notice is at Appendix IV.
- 5.3 Numerous requests to film and subsequently broadcast proceedings have been made since 1992; an overview of the successful requests is at Appendix V.

5.4 Although there has never been any research undertaken on the effect of “television in the courts” in Scotland, Lord Hope recently gave evidence to the House of Lords’ Select Committee on the Constitution about the operation of the UK Supreme Court. During that session he was asked about the broadcasting of proceedings. He mentioned his experiences in Scotland in his response:

5.4.1 *“Because there were no statutory restrictions, I decided that the public ought to know better how courts performed. The BBC came and prepared six documentary programmes and Scottish Television did another one. These were criminal trials that were shrunk into one-hour programmes explaining what went on in trials. Our experience in those programmes was that there was no question of acting up, partly because, when you go into court and you are confronted by a jury and you have a case ahead of you that you are managing, you are so concentrated on the work that there is not any time to be bothered by television ...*

5.4.2 *The way we operated in Scotland was that nothing should be done that would in any way inhibit the administration of justice. Along with that went an absolute rule that everything had to be with the agreement of everybody. The judge would have to agree and he would sense whether it was wise to permit filming; counsel had to agree; and the accused and witnesses, if they were going to be filmed, had to agree. So long as that is the rule, the chances of anything going wrong would be very small. As it happened, in the Scottish programmes, sentencing—where people were convicted—did follow, and it did not give rise to any cause for concern in those programmes. But I know very well from having prosecuted in Glasgow that the galleries fill up with the opposing factions and, whatever*

the result is from the jury, the sentence gets a lot of noise. It may not be desirable to have all that. The absolute criterion is that the administration of justice must not be impeded in any way by this. Documentary programmes fit in very nicely. Although the BBC and others may want live programmes, my feeling is that they would be very unlikely to get them, except in appeals, where these problems do not arise.”⁶

- 5.5 The review group had significant experience of trials where cameras had been allowed. This included the Lockerbie Trial, the Lockerbie appeal, the sentencing of David Gilroy, and participating in the working group for Windfall Films’ project which filmed the Nat Fraser trial in 2012.

Lockerbie Trial

- 5.6 The court room of the Scottish Court in the Netherlands was closely modelled on the courtrooms of the International Criminal Tribunal for the former Yugoslavia (ICTY) at The Hague. Cameras were incorporated in the construction and were unobtrusively installed high up in the walls.
- 5.7 For the purpose of allowing access to families of victims, approval was given by the court for the secure transmission of the proceedings of the trial by television to four locations beyond the precinct of the court in the Netherlands. These were in Dumfries, London, New York and Washington DC. Only previously accredited members of the families of the victims were permitted to attend to view the proceedings at the remote sites.

⁶ House of Lords, *The Select Committee on the Constitution*, evidence session 13 February 2013.

5.8 Prior to the trial the BBC petitioned the *nobile officium* of the High Court for permission to televise the proceedings of the trial (a) for the purpose of broadcasting simultaneously the entire proceedings of the trial; (b) for the purpose of broadcasting edited portions of the proceedings of the trial in news broadcasts and other broadcasts of topical or other interest; and (c) for the compiling and broadcasting, after the ending of the proceedings of the trial, of one or more documentary programmes on the circumstances surrounding the subject of the trial, including parts of the proceedings.

5.9 The prayer of the petition was refused, applying Lord Hope's 1992 Directions⁷. Lord Macfadyen's analysis of the 1992 Directions at para [60] is helpful in illustrating the balancing exercise which is required:

5.9.1 *[60] If I am wrong in applying paragraphs (c) and (h) of the Directions according to their terms, I am of opinion that, before the prayer of the petition could be granted, the petitioners would require to show that televising of the proceedings of the trial would involve no risk to the administration of justice. The onus would in that event, in my opinion, rest on the petitioners. It would not be for the Crown or the accused to demonstrate that there would be a risk to the administration of justice. Mr Martin sought to argue that televising the proceedings would not be likely to have an adverse impact on witnesses. It seemed to me, however, that the submissions made by the advocate-depute were cogent, and supported the conclusion that the risk that the televising of proceedings would have an adverse impact on witnesses and would give rise to a real risk of prejudice*

⁷ see *British Broadcasting Corporation, Petitioners* 2000 SCCR 533

to the administration of justice, was greater in the unusual circumstances of this case than in the ordinary run of criminal cases. In my opinion, the petitioners have failed to demonstrate that televising the proceedings would entail no risk to the administration of justice. On the contrary, it seems to me that the considerations identified by the advocate-depute render the risk greater than it would be in a routine criminal trial. I am therefore of opinion that, if the proper approach were for me to consider the petitioners' application on its merits, without regard to the categorical prohibition contained in paragraph (c) of the Directions, the result would be the same, namely that consent should not be granted."

5.10 The court held that the arrangements for broadcasting to the remote sites were of a different nature from public broadcasting of the proceedings and served a wholly different purpose.

Lockerbie Appeal

5.11 Authority was given by the court for the proceedings of the appeal, which was heard in 2002 at the Scottish Court at the Netherlands, to be broadcast simultaneously in its entirety and used for broadcasting in news bulletins, etc. No difficulties were experienced in the broadcasting of the appeal.

Sentencing of David Gilroy

5.12 In March 2012, STV News requested permission to film the sentencing of David Gilroy, who had been convicted of the murder of Suzanne Pilley. Although the Lord Justice Clerk (Ross) had allowed cameras into the High Court for sentencing in 1996, there were special circumstances which did not exist in this case. It seemed that the request from STV was caught by paragraph (c) of the 1992 Notice:

5.12.1 *"In view of the risks to the administration of justice the televising of current proceedings in criminal cases at first instance will not be permitted under any circumstances."*

5.13 Lord President Hamilton took the view that there did not appear to be a risk to the administration of justice and the request was granted. In granting the request conditions were imposed to cover arrangements for: who could be filmed; how the recording would be made; what could be filmed; editorial control and pooling of the footage.

5.14 *Who could be filmed:* The camera would focus only on the judge and no other person would feature in the footage except perhaps the Macer and Clerk. This meant that the permission of the Macer and Clerk had to be obtained prior to filming. It also meant that the prosecution and defence team could not be filmed; neither could the convicted person.

5.15 *How the recording would be made:* The camera was to be located in the jury area of the courtroom and operated by two sound and vision technicians. Microphones could be placed on the bench to ensure sound quality. STV was to be given access to the court from 8.30am on the day to run sound checks and set up the equipment.

5.16 *What could be filmed:* Filming was to commence when the defence counsel concluded the plea in mitigation and the judge asked the accused to rise. Filming was to end when the judge completed the sentence and rose from the bench.

5.17 *Editorial control:* Any intervention or disturbance from the public gallery or the convicted person was to be edited out prior to transmission.

5.18 *Pooling of the footage:* The film footage was to be made available to all other broadcast media immediately after proceedings via satellite feed. This was the sole responsibility of STV. In addition, no visible branding was allowed to appear on the final broadcast footage.

Windfall Films

5.19 In 2011, Lord President Hamilton granted an application by Windfall Films to make a series of documentary films for Channel 4 of trials in the High Court. A Working Group under the Chairmanship of Lord Carloway held a series of meetings with representatives of Windfall Films. In the course of 2011 it became apparent that meeting the requirement in paragraph (h) of the 1992 Notice, that filming may be done only with the consent of all parties involved in the proceedings, was such an onerous requirement that it seemed unlikely that it would be possible for the company to film any trials. Against that background, at the request of the Working Group, the Lord President issued the Notice dated 23 January 2012 permitting the filming without the consent of all parties.

5.20 Applications to film were refused on other grounds. For example, Windfall Films applied to film the trial of David Gilroy, the information placed before the trial judge indicated that the accused and his legal representatives would not consent. There was also strong opposition from the family of the deceased, against a background in which the accused had been conducting an extra-marital affair with

her. Both the defence and the Crown expressed concern with respect to the position of the family of the accused, who were cited as witnesses in the trial. The children of the accused were teenagers, who were at a vulnerable stage in their development. The trial judge refused the application.

5.21 Windfall Films then made an application to film, for documentary purposes, the trial of Nat Fraser, which was to take place at Edinburgh High Court in February 2012. Following the practice adopted in the case of the Gilroy application, the trial judge held a hearing at which all parties, including Windfall Films/Channel 4 were represented by counsel. While the accused refused consent and the family of the deceased expressed reservations, all other parties were willing to grant consent. The trial judge granted the application. In the event the family of the deceased became supportive of the project and gave interviews to the film company. Prior to the film being broadcast Nat Fraser changed his mind and agreed to the footage of him in court being included. As Mr Fraser did not give evidence no question arose in relation to the filming or broadcasting of his evidence. The documentary was broadcast on 9 July 2013.

5.22 The arrangements for filming the trial were as follows. Six remotely controlled cameras on stands were located around the court room. These were controlled from a separate room within the building which was allocated as a control room. Microphones for audio recording were installed in the court and personal microphones were worn by counsel and the trial judge. A request to allow a cameraman with a handheld camera to move around in the public benches while the court was sitting was refused as intrusive and disturbing. The cameras

around the courtroom were relatively unobtrusive and all parties got used to them very quickly. It seemed that they simply merged in with all the other equipment with which a modern court is familiar. Only one witness raised any issue about being filmed. That witness, after reassurance, withdrew any objection.

- 5.23 The trial judge concluded that the administration of justice was not in any way affected by the filming of this trial. He did not think that witnesses were even aware of the presence of the camera once they were giving evidence. Further, he reported that nobody involved in the trial behaved in an inappropriate way because of the presence of the cameras.

Filming during jury site visits

- 5.24 Occasionally a jury may be required to visit the locus of a crime or other site of significance during the course of a trial. This usually attracts considerable media attention as effectively the trial moves from the courtroom to another site for the duration of the visit. In this situation the same rules on filming in the courtroom apply. The judge, counsel, the accused and members of the jury may not be filmed or photographed during the visit. In the past, instructions to the media have been issued in advance outlining arrangements for the site visit and providing guidance on what can and cannot be filmed or photographed during the visit.

Live, text-based communications

5.25 Currently the permission of the court is required to use devices that allow LTBC from court such as mobile phones, laptops or tablet devices. Where permission is granted the devices must be switched to silent and may not record the proceedings. In 2010 permission was granted in the Tommy Sheridan perjury trial to report the sentencing diet.

6. England and Wales

Cameras in court

6.1 Filming has been banned in the courts of England and Wales since 1925. However, the Crime and Courts Act 2013 has reversed that position and cameras are to be allowed into the appeal courts from October 2013.

Live, text-based communications

6.2 In relation to England and Wales, guidance on live, text-based communications using lap-tops and hand-held devices to communicate directly from courts was recently issued by the Lord Chief Justice⁸ (following a consultation). The guidance makes clear that representatives of the media and legal commentators may use such text-based devices to communicate from courts without having to apply to the courts to do so, whereas members of the public should make a formal or informal application if they wish to use such devices. The guidance emphasises that anyone using electronic text is still

⁸ <http://www.judiciary.gov.uk/publications-and-reports/guidance/2011/courtreporting>

strictly bound by the existing restrictions on reporting court proceedings under the Contempt of Court Act 1981 and acknowledges that there may be concerns with regard to the administration of justice.

7. UK Supreme Court

Cameras in Court

7.1 When the UK Supreme Court was established, the Constitutional Reform Act 2005 amended the above-mentioned prohibition in England and Wales to exclude the Supreme Court from its scope. The UK Supreme Court, which does not hear evidence, has a live streaming service via Sky News and recently started to upload videos of its members delivering opinions on YouTube. Lord Hope recently made the following observations on its benefits:

7.1.1 *“It has real benefits. Perhaps I can mention one or two statistics to show how we benefit from this. We have live footage that is available and people can pick up if they want to view it. BBC Parliament, apparently, at weekends—although I have not seen it myself—slot in a few bits from us along with parliamentary material. We have live streaming every day through Sky News and the streaming page has received a total of 215,000 viewers and a monthly average of something like 20,000 unique viewers. We are now on YouTube and we have apparently had something like 13,000 views since we introduced that in January. People are using this as a means of information and watching what we do. If one is trying to disseminate information about how the law works, that is a very good thing...*

7.1.2 *This [inaccurate media reporting] is a fear that is voiced from time to time, as indeed is the idea of people playing to the camera, but the reality is that these things are not happening. I can see that one could say there was a risk, but our experience in the Supreme Court has been that, when things have been used from our live feed, they have been fitted very neatly into, for example, programmes about the result of a case in our court. You may see the judges delivering a judgment for about 10 seconds. There is not any distortion there. We have had two or three documentary programmes as well, and those were responsibly prepared, as were the Scottish programmes that I mentioned earlier. There is a relationship, of course, of negotiation and trust between us and the media. The media know perfectly well that if they were to err on the wrong side of the line, then consequences would follow. Our experiences so far have been, I would say, very satisfactory and beneficial as far as the public are concerned.”*

Lord Neuberger added:

7.1.3 *“There is something slightly uncomfortable about judges not wanting to be filmed, given that we are so committed to open justice, unless there is a good reason, such as witness protection, jury protection or noises from the gallery—to put it compendiously, as Lord Hope has done, the administration of justice in a proper way.”⁹*

⁹ House of Lords, *The Select Committee on the Constitution*, evidence session 13 February 2013.

Live, text-based communications

7.2 The UK Supreme Court issued guidance in February 2011 in relation to LTBC. The policy allows any member of a legal team or member of the public to use text-based communications from court so long as there is no disruption to the proceedings. The policy has three important restrictions: if reporting restrictions are in place; if the case involves a child, anonymity must be preserved; and to avoid influence on other proceedings in a lower court, the outcome may be restricted. The full policy is at Appendix VI.

8. European Court of Human Rights

8.1 The European Court of Human Rights provides “webcasts” of all publicly open oral hearings¹⁰. It is important to note that the nature of proceedings before the European Court means that neither is there evidence led nor is there likely to be much discussion of questions of fact. Furthermore, in only a very small proportion of cases decided by the European Court is an oral hearing thought necessary.

9. International Criminal Tribunal for the former Yugoslavia (ICTY)

9.1 Proceedings of the International Criminal Tribunal for the former Yugoslavia are recorded and broadcast using court equipment. There are six cameras placed in high positions that can move, zoom and tilt. The Tribunal employs four video directors, formerly employed in television. The directors are prohibited from employing “pan” or “zoom” shots; they must use “hard cutting”, i.e. switching from one

static shot to another. They must cut away from any visibly distressed participant. Witnesses' faces and voices can be disguised if the individual involved wishes. The footage is broadcast with a thirty minute delay allowing details to be edited out if mistakenly mentioned in open court. The decision on such editing lies with the judges. Footage is available free to companies such as CNN and the BBC.¹¹

- 9.2 In a report based on surveys of judges, counsel and witnesses after eighteen months of televised proceedings, respondents broadly thought their own behaviour was unaffected by the cameras. When asked about the effect on others' behaviour, it was said:

Witnesses

- 9.2.1 *“Opinion differs among respondents on the extent to which cameras affect witnesses. The majority of respondents stated that the experience of giving testimony and the content of that testimony made it difficult to determine what effect cameras had on witness behaviour in court.*

Judges

- 9.2.2 *A large majority of respondents do not think that judges were affected by the presence of cameras. The overwhelming opinion was that judicial professionalism and day to day experience of televised trials allows them to perform their tasks without distraction.*

¹⁰ <http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c=>

¹¹ Mason, *Report on the Impact of Electronic Media Coverage of Court Proceedings at International Criminal Tribunal for the former Yugoslavia*, 2000, paras 1.22, 1.23, 1.25, 1.26, 1.27, 1.28.

Counsel

9.2.3 ... the majority of respondents do not think that counsel were affected by the presence of cameras. There was some overt criticism of counsel using cameras for political gain to further their clients cause. Many respondents could not discern whether attorney theatrics was due to the presence of cameras or part of their armoury.

Defendants

9.2.4 The passivity of defendants in the trial makes it difficult for respondents to establish the degree to which defendants may be affected by the presence of cameras."¹²

9.3 This demonstrates the observation made in the report on the United States Federal pilot that it is difficult to differentiate those aspects of behaviour that coincide with the presence of cameras and those which are caused by it.

¹² Mason, *ibid*, executive summary, pp iv-v.

10. European Civil Law Jurisdictions

10.1 The group has encountered difficulty in finding publications describing the situation in European Jurisdictions. For instance, it can be surmised from a decision of the German Federal Constitutional Court of 2001 that courts in Germany have discretion to permit or prohibit the televising of proceedings. The decision is described online¹³ but that article does not set out the terms of the relevant statute, which is not available in English.

10.2 There is a small amount of information available regarding televising of proceedings in Norway in connection with the prosecution of Anders Breivik.

10.3 As is apparent from the Norwegian Courts' website¹⁴ one television company had the exclusive rights to take still photography, moving images and sound recordings from the trial. This was made available to other media companies on payment of a fee. The BBC reported that the court prohibited coverage of statements by Breivik and by civilian witnesses¹⁵.

¹³ <http://www.germanlawjournal.com/index.php?pageID=11&artID=49>

¹⁴ <http://www.domstol.no/no/Enkelt-domstol/22-7/Presse/Facts-/Photo-and-pool-scheme/>

¹⁵ <http://www.bbc.co.uk/news/world-europe-17312079>

11. United States of America

Federal courts

- 11.1 Filming and broadcast of criminal proceedings in US federal courts has been prohibited by Federal Rule of Criminal Procedure 53 since 1946. Rule 53 states: "*[e]xcept as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.*"
- 11.2 However, from July 1991 a two-year pilot was run permitting broadcasting in six civil courts of first instance and two civil appeal courts. A report reviewed the operation of the pilot.¹⁶ The judges of the relevant courts had volunteered for inclusion in the pilot;¹⁷ thus the sample would tend to include pro-broadcast judiciary.¹⁸ Broadcasting was permitted by request, which was required reasonably in advance of the hearing. No broadcast of jurors was permitted. For five of the first instance courts, only one TV camera and one still camera was permitted. For the sixth first instance court and on appeal, two TV cameras and a still camera were permitted. Where multiple broadcasters wanted to cover the same proceedings, they were required to "pool" their footage (i.e. one would be responsible for operating the cameras and would then share the images with the other broadcasters). The court retained discretion to refuse, terminate or limit media coverage.¹⁹

¹⁶ Johnson & Krafska, *Electronic Media Coverage of Federal Civil Proceedings*, (1994) <<https://bulk.resource.org/courts.gov/fjc/elecmediacov.pdf>>, p 1.

¹⁷ p 4.

¹⁸ p 8.

¹⁹ p 5.

11.3 Media representatives used the following criteria in deciding whether to report cases in this fashion²⁰:

- whether the subject matter of the case had universal relevance or broad applicability;
- whether it was “newsworthy”;
- whether the story was relevant to local interests; and
- whether the case involved high profile litigants.

11.4 Trials were most commonly covered. ²¹ Topics of particular interest were civil rights (e.g. race and sex discrimination) and personal injury cases.²² Eighty-two percent of requests were granted.²³ Most local agencies did not cover cases from start to finish. Aspects most frequently mentioned as being covered included opening arguments, key testimony, closing arguments and the verdict. Use of footage was limited. It was most commonly used to illustrate the reporter’s narration rather than to tell a story through the words of attorneys, judges or witnesses, and to illustrate aspects of the facts of the case rather than the legal process involved.²⁴

11.5 Asked in what way they thought that video footage enhanced presentation of the case, media representatives said the use of courtroom footage produced a more realistic depiction of the proceedings and it allowed viewers to see the expressions and emotions of the courtroom participants. As one respondent put it

²⁰ p 29

²¹ p 7.

²² p 11.

²³ p 7.

²⁴ p 7.

“video tells a much better story than a sketch artist’s rendition – one can see when a judge gets angry and the facial and body expressions of the parties.”²⁵

11.6 The broadcast coverage did not provide a high level of detail about the legal process in the cases covered. Increasing the proportion of courtroom footage used in a story did not significantly increase the information given about the legal process.²⁶

11.7 The report suggested that it was hard to identify what proportion of time was spent by court staff on administration resulting from the use of cameras in the court. This was no doubt partly because use was more intense in some areas than in others, but the figures varied from one percent to as much as twenty-five percent.²⁷

11.8 Judges were surveyed on the effects, positive and negative, upon witnesses, jurors, attorneys and the judges themselves.²⁸ Of those judges participating (note that this probably was not representative of the federal judiciary as a whole) attitudes to media coverage were broadly neutral at the outset, and tended to become more favourable as a result of the pilot.²⁹ This positive effect was limited to first instance judges; the views of appellate judges did not change.³⁰ It should be noted, however, that not all judges held favourable attitudes towards electronic media coverage, and some had strong objections.³¹

²⁵ p 30

²⁶ p 36

²⁷ p 31

²⁸ pp 11-12.

²⁹ p 7.

³⁰ p 16.

³¹ p 25

11.9 Attorneys were split (28% : 68% : 4%) as to whether the pilot had made them more favourably disposed, made no difference to their view, or made them less favourably disposed to broadcasting court proceedings.³² One attorney noted a witness having refused to testify due to the prospect of camera coverage (72 attorneys responded to the questionnaire).³³

11.10 Judges who accumulated extensive experience of cameras in the courtrooms as part of the pilot were interviewed. Judges thought the greatest potential benefit of coverage would be the education of the public, but this had only been achieved to a moderate extent, or not at all.³⁴ Several judges expressed the view that the education function was best served through extended coverage of proceedings rather than brief “snippets” of coverage. The potential disadvantage of electronic media coverage most frequently mentioned by judges was the potential for distortion or misrepresentation, although they did not feel that this had occurred under the programme³⁵.

11.11 Most judges noticed no effect on witnesses or attorneys. They thought the cameras had no effect on them, or that they had become more courteous or vigilant. With one exception, judges noticed no effect on decorum. The one exception thought in one case that counsel had played to the cameras.

³² p 19.

³³ pp 22, 19.

³⁴ p 24.

³⁵ p 25

11.12 The report's authors candidly admitted the limitations of the pilot. First, the only objective measure of effects on jurors and witnesses would be to compare their behaviour and perceptions between courts where broadcasting was permitted and a control group where it was prohibited. Such an experiment was not thought feasible because of the low number of high media-interest trials. No attempt was made directly to measure the attitudes of jurors, witnesses and parties on the basis that, being typically first-time participants in the court process, they had nothing with which to compare their experience. Instead the views of judges and attorneys were sought as a proxy.³⁶

11.13 The report also reviewed studies of camera use in state courts. The studies covered twelve different states, in each case both civil and criminal proceedings.³⁷ Witnesses in New York by a large majority claimed not to be nervous, or only a little nervous, due to camera coverage. Jurors in Florida and New Jersey said the cameras had no effect on their ability to determine the truthfulness of witnesses.³⁸ Of course these results have all the perils associated with a person honestly and subjectively trying to report their own thoughts and behaviour. A survey of Californian proceedings concluded from witness observation that those giving evidence under filmed conditions were no less effective in communicating than those who were not filmed.³⁹ How that assessment was made is not described in the report.

³⁶ p 8

³⁷ p 38.

³⁸ p 39.

- 11.14 The report recommended the rolling out of broadcasting of civil federal proceedings across the United States.⁴⁰ No significant changes in the guidelines were suggested other than permitting two TV cameras in court and installing permanent camera facilities.⁴¹
- 11.15 The Judicial Conference of the United States considered the report on 20 September 1994. They determined that: *“Based upon the data presented, a majority of the Conference concluded that the intimidating effect of cameras on some witnesses and jurors was cause for concern, and the Conference declined to approve the Committee’s recommendation to expand camera coverage in civil proceedings.”*⁴²
- 11.16 It is not clear precisely to what data the Conference were referring. It may be, for example, to the views of first instance judges surveyed with experience of cameras in the courtroom under the pilot. A substantial proportion thought cameras would to some extent make witnesses less willing to appear in court (46%) or that it would to some extent make them more nervous (64%).⁴³
- 11.17 The Judicial Conference in 2010 authorised a further pilot for three years, involving 150 first instance courts. The cameras were to be operated by the court itself, no filming of jurors was to take place and the consent of parties was required.⁴⁴ The review is not aware of any publicly available reports on this pilot.

³⁹ p 39.

⁴⁰ p 43.

⁴¹ pp 44-45.

⁴² *Report of the Proceedings of the Judicial Conference of the United States* (20 September 1994), p 47.

⁴³ Johnson & Krafka, *supra*, p 14.

California

11.18 California is known for having been the venue of the trial of OJ Simpson. In light of that and another media sensation,⁴⁵ the court reviewed its rules on cameras in the courtroom. The operation of the revised rules was the subject of a report in 2000 covering three years of the new rules.⁴⁶ Two notable amendments to the rules prohibited any coverage of jurors or spectators (“close up” coverage of jurors had previously been prohibited) and any coverage of proceedings from which the jury were absent (pre-trial hearings, submissions outwith the presence of the jury) was prohibited. The OJ Simpson trial had included such footage and contained shots of family members of the victims reacting to particular passages of evidence.⁴⁷

11.19 The report’s assessment was limited to a statistical analysis of the media requests made and granted, an examination of appeal decisions on media requests and a review of legal and lay literature. Since the rules were amended there had been no increase in appeals on decisions to grant or refuse requests to put cameras in the courtroom, nor had there been any appreciable interest or controversy on this topic in the lay or legal press.⁴⁸ The report made no recommendations for changing the rules.⁴⁹

⁴⁴ *Report of the Proceedings of the Judicial Conference of the United States* (14 September 2010), p 11.

⁴⁵ The trial of the Menendez brothers accused of murdering their parents. The first televised trial resulted in hung juries; cameras were banned in the second trial and both accused were convicted.

⁴⁶ *Cameras in the Courtroom: Report on Rule 980*, (2000), <<http://www.courts.ca.gov/documents/cameras.pdf>>.

⁴⁷ Cohn & Dow, *Cameras in the Courtroom: television and the Pursuit of Justice*, (2002), pp105, 106.

⁴⁸ *Cameras in the Courtroom: Report on Rule 980*, (2000), pp 11-12.

⁴⁹ *Ibid*, p12.

11.20 The current rules are in substantially the same form as when the 2000 report was issued and are set out in Appendix VII.⁵⁰ Put shortly, five working days' notice is required for requests to have cameras in the courtroom. The court has a broad discretion as to whether to grant the order. No more than one TV camera and one still camera are permitted. Where more than one media outlet wishes to cover proceedings, they are expected to pool footage between them. No coverage is permitted of the jurors or spectators.

12. New Zealand

12.1 A pilot for television, still photography and radio transmission of court proceedings ran in New Zealand from 1 January 1995 for three years. The pilot was confined to three "High Courts" and one "District Court."⁵¹ Although various reports were produced regarding the pilot, we have been unable to obtain copies of these. It seems also that the rules governing the pilot were something of a moveable feast.⁵² We therefore do not attempt a description of how media use was regulated, given that there was no uniform practice. Rather we shall set out the summary contained in "Stepniak, *Audio-Visual Coverage of the Courts: A comparative analysis*, (2008):

12.1.1 *"The research and surveys disclosed that television cameras distracted most participating judges, caused half of them additional stress and increased the workload of court staff, while not having a significant negative impact on the majority of jurors, witnesses or counsel..."*

⁵⁰ See original at <http://www.courts.ca.gov/documents/title_1.pdf>, p 19 *et seq.*

⁵¹ Stepniak, *Audio-Visual Coverage of the Courts: A comparative analysis*, (2008), p 326.

⁵² *Ibid*, pp 326-327, 339.

12.1.2 *Whilst most participants in televised proceedings were found to deem televised coverage to be educative, most of non-media stakeholders disagreed.*⁵³

12.2 Note the contrast with the United States. Whereas there judges felt it had little impact on themselves but worried about the effect on others, NZ judges were affected unlike, for the most part, other participants in the trial.

12.3 Notwithstanding the effects on judges, media coverage of the courts has been continued and the regulations, to some degree, relaxed. We set out the current guidelines in Appendix VIII.⁵⁴ In essence; applications must be made at least ten working days in advance. Whether to grant permission is a matter of discretion for the judge, except in “sexual cases” where the complainer objects. Apart from the accused, witnesses giving evidence in an official capacity and expert witnesses, any witness is entitled to require that any publication or broadcast leaves the witness “not recognisable”. Jurors and spectators may not be filmed. The accused may not be filmed without their consent, except for fifteen minutes at the beginning of each day (provided that the verdict or sentence is not being delivered). Only one camera may be used in court.

⁵³ *Ibid*, pp 338-339.

⁵⁴ For the original see: <<http://www.justice.govt.nz/media/media-information/media-guide-for-reporting-the-courts-3rd-Ed/appendices/appendix-1-in-court-media-coverage-guidelines-2012>>.

13. South Africa

13.1 Difficulties arise with describing the situation in South Africa. Although the prosecution of, and bail hearing, regarding Oscar Pistorius created a media sensation, there was no audio or video broadcast permitted of the proceedings. Photos such as appeared in the UK press⁵⁵ were obtained during breaks in proceedings. However, the images of Mr Pistorius surrounded by photographers, both professionals and those using mobile phones, gave striking support for the notion that footage or still photographs should be pooled and only one camera allowed. The decision of the magistrate granting bail was also broadcast live in audio format, though no television coverage was permitted.

13.2 Two decisions were easily accessible regarding television broadcasting of court proceedings in South Africa. The first, *South African Broadcasting Corporation Limited v Thatcher*, concerned an application to broadcast the proceedings raised by Mark Thatcher against the South African Government. These proceedings arose from the Government's attempt to extradite Thatcher to Equatorial Guinea on allegations that he took part in an attempted coup there. Permission was granted to record proceedings for the purposes of an edited daily highlight package for use in news bulletins, subject to certain conditions set out in paragraph 1 of the judgment⁵⁶. By contrast the Constitutional Court of South Africa refused an appeal from the Supreme Court of Appeal which had denied an application to broadcast its proceedings. The

⁵⁵ <http://www.guardian.co.uk/world/blog/2013/feb/22/oscar-pistorius-bail-decision-live-coverage>

⁵⁶ <http://www.saflii.org/za/cases/ZAWCHC/2005/63.html>

case concerned convictions for making corrupt payments to Jacob Zuma, who at that point was Deputy President of South Africa⁵⁷. It seems from the two decisions that there was not, at least at that time, any statute or guidelines regulating when permission for TV coverage would be permitted.

14. Australia

14.1 The position in Australia is comprehensively treated in the work of Stepniak⁵⁸ and it is summarised here. The lessons to be learnt from Australia would seem to be limited as Stepniak observes:

“While all Australian jurisdictions have permitted television cameras to record and broadcast court proceedings, no Australian court has allowed more than restricted ad hoc coverage”⁵⁹.

14.2 There is no clear pattern or policy regarding coverage in Australia. In addition a distinction must be drawn between those courts of the individual States of Australia, and of the Federal System of Courts.

14.3 Television cameras in New South Wales have only been permitted for ceremonial sittings or formal parts of the proceedings of the court⁶⁰. A notable exception was in 1998 when the State Coroner permitted an audio recording of his findings in the inquest into the death of Michael Hutchence⁶¹.

⁵⁷ www.saflii.org/za/cases/ZACC/2006/15media.doc

⁵⁸ *Audio-Visual Coverage of the Courts* (2008), Ch. 5 pp 201-299

⁵⁹ p237

⁶⁰ *ibid*

⁶¹ p238

- 14.4 A similar situation obtains in Queensland where only ceremonial sittings have been broadcast, apart from the use of footage in documentaries⁶². Tasmania permits recording of ceremonial sittings⁶³.
- 14.5 The courts of Western Australia have promulgated guidelines which are set out in Stepniak⁶⁴. However, coverage there has been very limited in practice, mostly for the reason that television companies are simply not interested⁶⁵. As a result the Western Australian Courts are considering making their own provision for broadcasting of proceedings⁶⁶.
- 14.6 The Courts of South Australia have experimented with the filming of proceedings for subsequent broadcast. One trial for possession of drugs was recorded in audio in 1996. Eleven hours of audio were edited down to two hours, which was then sent to the Chief Justice for South Australia and to the parties for approval⁶⁷.
- 14.7 The courts in the state of Victoria have had a chequered experience with broadcast coverage. In 1995, the sentencing judge permitted broadcast of his sentencing of Nathan John Avent. He had been convicted of murder of a ten year old boy. The application to broadcast was granted over the opposition of counsel for the convicted person. In the subsequent appeal against sentence, the Court of Appeal said that a "fair minded lay observer who had knowledge of the material objective facts might have entertained a reasonable

⁶² ibid

⁶³ p244

⁶⁴ p423

⁶⁵ pp 239-240

⁶⁶ p241

⁶⁷ p 243

apprehension” that the judge was influenced by the fact that the hearing was being recorded⁶⁸.

14.8 Notwithstanding this implied criticism by the Court of Appeal, the sentencing of Martin Bryant, a mass murderer, was the subject of an audio broadcast the following year without any adverse comment⁶⁹. On 27 August 2007 the sentencing judge also permitted television coverage of his sentencing of Peter Norris Dupas, another mass murderer⁷⁰. There has also occasionally been coverage permitted of decisions in high profile civil cases⁷¹.

14.9 The Federal Courts have allowed limited coverage of their proceedings. The judgment at first instance and on appeal in 1998 of a high profile industrial dispute was filmed. The judgment in an action arising from historic policy of removing part-aboriginal children from aboriginal parents was broadcast in 2000. There has also been some coverage of proceedings regarding aboriginal land rights; this may be because of particular cultural considerations⁷².

14.10 A controversy arose in the Tampa case of 2001 which concerned the legality of detaining asylum seekers on a ship off the coast of Australia. The asylum seekers won at first instance which provoked criticism from the Government. However that criticism went beyond the terms of the judgment to attack also the decision to permit TV cameras into the court room. The Deputy Prime Minister criticised this in a radio

⁶⁸ p 264

⁶⁹ see generally pp 261-266

⁷⁰ p 269

⁷¹ pp 269-270

⁷² see generally pp 353-356

interview suggesting that this was a “slippery pathway to Hollywood”⁷³. Despite this criticism, the Full Court permitted the recording of “overlay footage” (i.e. recording of video without sound). A broadcast of the Chief Justice reading a summary of the court’s decision was also permitted⁷⁴.

14.11 The High Court of Australia, which hears appeals from both the State and Federal Courts, has remained entirely opposed to permitting broadcast of its proceedings⁷⁵.

15. Canada

Federal Courts

15.1 Federal courts typically deal with judicial review proceedings, in which there are no witnesses. For such cases the court will generally grant permission to record video and audio for publication and broadcast. They require pooling. In any event, media representatives may tape record proceedings in order to verify their notes, but not for broadcast.⁷⁶ An exception is the Supreme Court of Canada (i.e. the final court of appeal), which, since the 1990s, has permitted broadcast online and elsewhere of gavel-to-gavel coverage.⁷⁷

⁷³ p 257

⁷⁴ *ibid*

⁷⁵ p 272 – *et seq*

⁷⁶ <http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/MediaPolicy>

⁷⁷ <<http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm2012-01-31-eng.asp>>

Provincial Courts

15.2 Trial courts in Canada do not generally permit broadcasting of proceedings.⁷⁸

15.3 In Ontario, court recording is not permitted.⁷⁹ A pilot scheme broadcasting 21 Court of Appeal cases in 2007 was conducted. ‘Gavel-to-gavel’ footage was broadcast online and archived for later access on the website, with DVD recordings provided to the media on request. The court was responsible for the broadcast. The evaluation report was largely positive though based on limited research. A note of caution was nevertheless sounded: *“All 21 of those interviewed and surveyed agreed that there are potential negatives to the use of cameras in the courtroom that must be controlled should a courtroom camera programme be introduced into Ontario courts. High on the list of negatives was the risk of sensitive information being inadvertently released.”*⁸⁰

15.4 The survey results were based on only 21 “participants” including “court personnel” and “media”.⁸¹ Only *R v Mullins-Johnson* was thought worthy of broadcast.⁸² That case concerned the successful appeal against conviction for murder and sexual abuse of a four-year old child. The Crown conceded that the conviction should be set aside after the original pathological and medical evidence was discredited.⁸³ It seems this was a notorious miscarriage of justice. Apparently all the

⁷⁸ <<http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm2012-01-31-eng.asp>>

⁷⁹ Courts of Justice Act 1990, s 136.

⁸⁰ <<http://files.slaw.ca/Cameras in Ontario Court of Appeal Evaluation.pdf>>, p 13

⁸¹ <<http://files.slaw.ca/Cameras in Ontario Court of Appeal Evaluation.pdf>>, p 11.

⁸² Ibid.

⁸³ <http://www.ontariocourts.on.ca/decisions/2007/october/2007ONCA0720.htm>

other cases were too mundane to merit coverage. It seems that camera coverage ended with the pilot.

15.5 A ban on recording and broadcasting of court proceedings in Quebec was upheld in the Canadian Supreme Court. The court below, in light of the report submitted to it, was entitled to find that this could increase the stress of witnesses, affecting their demeanour and thus distort the assessment of their credibility.⁸⁴ The relevant report is available only in French.

⁸⁴ *Canadian Broadcasting Corporation v AG of Canada* 2011 SCC 2, at para [67] <<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/7914/1/document.do>>.

16. Discussion

- 16.1 The review is still gathering evidence for consideration of this complex and important topic. However, some themes and arguments are emerging from the available information on the experience in Scotland, the UK and further afield. This chapter analyses the issues relating to the different types of proceedings and of the roles played in those proceedings by different individuals. The different modes of media are then considered in light of the issues involved. An attempt is made to identify where any threat to the administration of justice may lie, and, equally, where media exposure may enhance the administration of justice.
- 16.2 Characterisation of the position with regard to ‘new media⁸⁵’ is often that the ‘genie is out of the bottle’. This has the implication that we must accept the proliferation of equipment, technology and forums that can be used by professional journalists and the public alike to record and broadcast from court.
- 16.3 It is notable that new media are more immediate, accessible and permanent than more traditional broadcast or print media. Once a story has been shared and viewed across the internet it is outwith the control of the authorities or even the person who first published it. In this context, the review group is charged with considering what should be allowed in respect of recording, broadcasting and LTBC from court.

⁸⁵ This is a term used to describe the range of online resources for news and comment.

- 16.4 It is also notable that an increasing number of people in the UK get their news online⁸⁶ and that the print media are in decline⁸⁷. If, as Lord Hope suggested, ‘one is trying to disseminate information about how the law works’ then it would seem prudent to consider taking advantage of modern resources to do this.
- 16.5 The review has to balance the principle of open justice with the proper administration of justice. This involves consideration of the rights of various parties, some of which may be in conflict: the right of an accused person to have a fair trial; the rights of victims and witnesses to be protected from threats or the fear of threats; the individual’s right to privacy; and the fact that a free press should be able to “impart information and ideas on all matters of public interest.”⁸⁸ Both jurors and witnesses commonly find the experience of being involved in court proceedings, particularly criminal proceedings, to be highly stressful. Care requires to be taken to avoid adding to that stress, which might adversely affect a person’s ability either to give evidence openly, fully and honestly or to participate fully in the judicial process as a juror.
- 16.6 It cannot be predicted conclusively what the effect might be on the administration of justice of allowing filming or broadcasting of proceedings. All one can do is identify any risks to the administration of justice and consider in principle what steps may be taken to mitigate them.

⁸⁶ The Ofcom report *The Communications Market 2012* revealed that one in six smartphone owners in the UK accesses news on their handset almost every day

⁸⁷ The same report has a finding that declining circulation of print newspapers is occurring alongside shift in emphasis to online versions

⁸⁸ *The European Convention on Human Rights and Fundamental Freedoms*

16.7 The review has proceeded on the basis that the principles of open justice, public courts and fair and accurate reporting of proceedings are in the public interest. In *Scott v Scott* Lord Atkinson noted that:

16.7.1 *'... in public trial is to found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect'*

16.8 Lord Shaw of Dunfermline added:

16.8.1 *"It is needless to quote authority on this topic from legal, philosophical, or historical writers. It moves Bentham over and over again. 'In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice.' 'Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.' 'The security of securities is publicity.' But amongst historians the grave and enlightened verdict of Hallam, in which he ranks the publicity of judicial proceedings even higher than the rights of Parliament as a guarantee of public security, is not likely to be forgotten: 'Civil liberty in this kingdom has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of any State be reckoned to enjoy a real freedom, where this condition is not found in its judicial institutions and in their constant exercise.'*

- 16.9 Consistently with these passages the review group considers that the ‘disinfectant’⁸⁹ of public scrutiny is to be welcomed, so long as the integrity of the legal process can be protected.
- 16.10 The risks to the administration of justice may vary according to the nature of the proceedings being filmed, the identity of the persons being filmed, and the purpose of the filming. Different approaches may be appropriate in relation to a request for filming for the purposes of a documentary to be shown at a later stage and a request for live transmission or news broadcast. There may be thought to be little risk to the administration of justice from filming for documentary, news broadcast or live transmission of appeals in either civil or criminal proceedings, at least where no witnesses are involved. The same may be thought to apply to legal debate in civil cases. Lord Hope’s observations (para 6.1.2) suggest that fears of inaccurate media reporting and playing to the camera in such cases would not be well-founded, although that risk may be slightly higher in cases where new evidence is being heard on appeal.
- 16.11 In first instance proceedings, the concerns are most acute in relation to criminal cases, although some of the same issues arise in civil proceedings. Experience suggests that it is possible in many cases to agree conditions and guidelines which enable filming to be carried out for documentary purposes at minimal risk to the administration of justice. Numerous examples have been given above. The use of fixed cameras seems to reduce the element of intrusion which might

⁸⁹ “Sunlight is the best disinfectant” is a well-known quote from U.S. Supreme Court Justice Louis Brandeis and refers to the benefits of openness and transparency

otherwise be felt, and the fact that the filming is for a documentary, to be broadcast at some later date, and no doubt with much of the footage ending up on the cutting room floor, may reduce the risk of 'grandstanding'. The documentary format makes it easier to ensure that any presentation of the case is accurate, balanced, fair and representative of the case as a whole.

16.12 It seems likely that in many cases filming of sentencing hearings for news broadcast purposes can also be managed, with care, as can be seen from the David Gilroy case. However, sentencing hearings are often highly charged affairs. There can be outbursts from the public benches, from the dock and unrest generally in the public gallery. For these reasons, live transmission of any sentencing hearings, including the judge's sentencing statement, might be thought to present particular difficulties. Even in respect of filming for broadcast news purposes, concerns may arise. These are probably more to do with seeking to ensure that a balanced report is presented, given that, as the US federal pilot observed, news programmes tend to use "snippets" of footage as illustration, and that may give rise to the risk of unbalanced reporting.

16.13 Preliminary hearings are essentially case management meetings at which there may be a very wide-ranging and relatively open discussion about issues which may arise in the trial, or even about the possibility that a plea might eventuate. These matters are not usually referred to in press reports. It is important for the purposes of efficient conduct of court business that such proceedings can continue to be conducted in as open a way as possible, and that might seem to preclude filming for news broadcast or live transmission, although

there would appear to be no such difficulty where filming was for the purpose of a documentary for broadcast subsequent to the conclusion of the case.

- 16.14 Against that background, we now turn to address some of the issues which might affect individual interests.

Witnesses in criminal trials

- 16.15 As explained in some of the reports on filming pilots, non-professional witnesses are typically first-time participants in the court process. They are likely to be anxious, irrespective of whether proceedings are being filmed. For complainers in particular, appearing in court as a witness can be a traumatic experience. Witnesses must be able to come forward without fear of repercussions and without the risk that their evidence is influenced by extraneous matters. There is a risk that witnesses may be more guarded or hesitant, and less frank, in their evidence if it may be broadcast. There are already well recognised difficulties in persuading witnesses to become involved and to attend court. Witnesses worry about repercussions, this is often, indeed usually, without justification, but the fear is real nevertheless. These concerns may be exacerbated by the prospect of being filmed.

- 16.16 On the other hand, it can be argued that filming of evidence is a way in which distortion, misunderstanding or rumour may be avoided.

- 16.17 Witnesses may not have any concerns about repercussions but may be shy, embarrassed or scared of making a fool of themselves. A further issue could be 'grandstanding'; by which is commonly meant that some witnesses may see the court appearance as an opportunity for

self-promotion. However the matter may not always be as overt or deliberate as that. Many witnesses in criminal trials can be psychologically vulnerable people. Their response to questioning can be emotional or aggressive. The fear is that such aggression or emotional response might be intensified by the presence of cameras, to the extent of distorting the essence of the witness's evidence.

Witnesses in Civil Cases

16.18 Some of the same concerns exist for witnesses in civil cases. However, witnesses in civil cases are more likely, though not exclusively, to be there in support of a party to the case, rather than 'bystander' witnesses who could be called in criminal cases. This may mean that they are less worried about intimidation or repercussions.

Expert and professional witnesses

16.19 Consent of expert and professional witnesses was assumed in New Zealand. However, occasionally it may be that these witnesses would have fears and concerns similar to those of members of the public called to give evidence. They could have concerns about their professional reputation or there could be a risk of self-promotion. With the exception of the police and some other public servants there may be an issue for the court in getting access to good quality independent and impartial expert evidence if concerns and anxieties are not assuaged.

Protected witnesses

16.20 The Vulnerable Witnesses (Scotland) Act 2004 makes provision for the use of special measures, such as a screen to prevent the witness seeing the accused or CCTV links to give evidence remotely, for the purpose of taking evidence from children or other vulnerable witnesses. With the exception of children, there has been a stepping away from using CCTV to protect vulnerable witnesses to allow the jury to perceive the non-verbal cues given by the witness; screens are now more common. Considering the impact that vulnerability may have on these witnesses' ability to give their best evidence, and that special measures are required to give the best chance of that evidence being given, there would seem to be difficulties in the way of filming of such witnesses even for documentary purposes. In addition, witnesses who give evidence in closed court should never be allowed to be filmed for whatever purpose, the more so when such witnesses are additionally allowed anonymity.

The evidence of witnesses

16.21 Apart from personal considerations for witnesses, it is important that witnesses who have yet to give their evidence do not hear what previous witnesses have said. Prior to giving their testimony, witnesses are precluded from being present in court during the evidence of other witnesses in the case. This is in an effort to ensure that the evidence of each witness is independent and uninfluenced by other evidence in the case; and in an attempt to limit the risk of collusion. Contemporaneous broadcasting of evidence of witnesses could be wholly destructive to this endeavour.

Jurors

- 16.22 Jurors are subject to many of the same fears and anxieties as witnesses. In addition, they are entrusted to make an important decision in unfamiliar circumstances. They are likely to be apprehensive and anxious. None of the recent rules the review has seen allowed jurors to be filmed for any kind of broadcast. In fact, the California rules were changed to preclude filming of jurors. The prevailing view seems to be that jurors are engaging in an act of public service that should not be imperilled. The opprobrium heaped on the jury in the first Vicki Pryce trial, by print and broadcast media alike, may not be conducive to the encouragement of this kind of public service. If the jury in such a situation were identified by being filmed, the matter would be so much the worse.
- 16.23 Subject to existing restrictions, LTBC use should not affect jurors, except in that members of the jury may access their own accounts and view inadvertently information which could be prejudicial to the case. This is outside the scope of this review.
- 16.24 Circumstances in first instance criminal trials where the jury is excluded could not be the subject of contemporaneous broadcast, whether live streaming, news reporting or LTBC. This would include objections and trials within trials. It may be that these elements could be considered for inclusion in filming for documentary purposes which would be broadcast once proceedings are concluded.

Summary proceedings

16.25 In summary proceedings, the issues affecting witnesses, members of the public and accused are largely the same as in relation to solemn proceedings. The fact that summary proceedings may be at a more local level, might make matters appear more personal and more acutely felt for those involved. Alternatively, the reduction of local newspaper reporting from court may create more of an impetus for local reporting through new media.

Parties

16.26 Parties in many civil cases may choose not to give consent to be filmed or to be identified in broadcast material. This may be particularly an issue in personal or family matters. They may also be subject to some of the same concerns as witnesses.

16.27 Parties appearing in person may be overwhelmed or intimidated if the proceedings are to be filmed. They may also be prone to 'grandstanding' or taking up more of the courts' time than is warranted, factors which are already experienced in some cases involving party litigants.

Accused persons and convicted persons in relation to appeals

16.28 The accused person is innocent until proven otherwise. There is no such thing as a typical accused. They may be first time participants in the court process, subject to some of the same anxieties or fears as have been described in relation to witnesses. Alternatively, they may have appeared in many trials as accused and as witnesses. Some may display confidence to the point of bravado; still others may become

distressed or mentally unwell during proceedings. Many are psychologically vulnerable.

16.29 The identities of accused persons are invariably known as part of the trial process, and in many cases there are photographs of accused persons used by the media to illustrate stories about the trial. Where an accused person is in custody it may be the case that no recent photograph is available. In such cases older images may be used, or images captured as the accused comes to court. However, many accused go to some lengths to hide their faces from photographers and may be unlikely to consent to their image in court being broadcast. Sensitive matters may arise if identification is an issue in the trial, in which case identification of the accused in broadcast images prior to the conclusion of the trial may be undesirable.

16.30 Accused persons may have concerns about the stigma associated with that status. Even if the person is acquitted, he or she may not want his or her image in the courtroom to be broadcast. If footage is broadcast before proceedings are concluded the 'trial in the media' may be given greater significance. The 1992 note (Appendix III) was predicated on the idea that consent must be gained before filming. This proved difficult to obtain, and was varied in the 2012 note (Appendix IV) to allow filming as long as images of those who do not consent were obscured. Nevertheless, for the reasons noted above, it may be important to reconsider the question of whether the accused's consent to filming should be required, at least if any question of live transmission or news broadcast during the trial arises.

16.31 Subsequent broadcast of footage of the accused in court for documentary purposes does not involve the same concerns. Insofar as issues continue to arise, they could be addressed by careful editing. Of course, care must be taken that editing is handled correctly. For example, the images shown should be in the context of the proceedings as they happened (e.g. not showing an accused person smiling from an earlier part of the day when in fact he was impassive in response to the evidence shown).

Spectators

16.32 Spectators have often been excluded from reported filming pilots, perhaps because of the difficulty in obtaining consent for filming or broadcast. In addition, the possibility that spectators might use the occasion of filming in court as an opportunity for protest or self-promotion must be considered. One only has to recall instances of disruption from the gallery during evidence, when the verdict is announced or when sentence is pronounced to know that this is a real risk that needs to be managed. Filming outside court, which is not in the scope of this review, shows how contemporaneous broadcast can be hijacked for publicity of even unrelated causes⁹⁰.

Counsel

16.33 There have been examples where counsel was suspected of playing to the cameras, and that has been noted in this jurisdiction in the past, but in more recent experience this has not been an issue. It may be that if filming becomes more common and expected, this would not occur.

⁹⁰ For an example see the anti-nuclear protester who used reporting about the recent Vicky Pryce case <http://www.guardian.co.uk/commentisfree/2013/mar/11/placard-chris-huhne-vicky-pryce>

16.34 Speeches in first instance criminal trials could be a good résumé of the case if shown together; but there would be concern if only one side of the argument were shown. As has been observed above, news programmes tend only to use ‘snippets’ of footage to illustrate a story. If the evidence led by the prosecution were shown in isolation, or at sentencing only the plea in mitigation were shown, this could lead to a one sided view of the case or personal repercussions against the victim or convicted person.

16.35 While agreed narratives in pleas of guilty at preliminary hearings give an account of the agreed facts, they may reveal personal information about victims or witnesses and could be distressing to those directly, and indirectly, involved.

Judges

16.36 As Lord Neuberger stated “There is something slightly uncomfortable about judges not wanting to be filmed, given that we are so committed to open justice”. At first glance this may be so, but one must examine the reason why judges may have reservations about filming, especially filming for live transmission or for news broadcast during the currency of a trial. The reason is not personal. Judges who have been involved in the filming of proceedings have usually felt under additional stress to begin with, but it is quite clear that very quickly this dissipates to the extent that they are hardly even conscious of the cameras. The use of fixed cameras obviously helps considerably with this.

- 16.37 Nor is the reason that judges are mired in the past. Any reluctance on the part of judges comes from genuine concerns about the administration of justice. It is unlikely that most judges would see any objection to the filming, whether for documentary purpose or otherwise, of appeal proceedings, debates in civil proceedings, sentencing diets and many interlocutory forms of proceedings. It may even be that many judges would see few obstacles to the filming of other civil proceedings, provided that certain safeguards are followed.
- 16.38 The main area where judges are likely to express concern is in relation to criminal proceedings, and in particular solemn criminal proceedings. Judges have a duty to see that proceedings are conducted fairly and within the law. Judges all have experience of witnesses for whom the giving of evidence has been a highly traumatic event. They are aware that witnesses and jurors often have concerns about repercussions, whether justifiable or not. They know how difficult it can sometimes be for witnesses to explain what happened to them in front of a room full of strangers.
- 16.39 In short, judges are acutely aware of the risks to the administration of justice which have been highlighted elsewhere in this review. The need to preserve the integrity of court proceedings is paramount. Judges will be conscious of the need to preserve the dignity of witnesses, victims, jurors and the accused. They will be wary of anything which might risk compromising that.

17. Consultation Questions

The review group is interested to elicit a broad range of responses to this consultation. It would be appreciated if in giving your response to the consultation you provide answers in the format set out at Appendix X. The questions are given here for ease of reference.

Appeals and legal debate

1. Do you perceive any risk to the administration of justice in allowing filming of **legal debate** in the following proceedings and for the following purposes?

Proceedings

- civil first instance
- civil appeals
- criminal appeals

Purposes

- documentary programme
- news broadcast
- live transmission

2. If you have answered yes to any combination, what risks do you anticipate?
3. Are there any steps which could be taken to minimise such risks?

Filming of first instance proceedings for documentary purposes

4. Should the court allow filming of criminal proceedings at first instance for documentary purposes?
5. Does filming for documentary purposes carry with it any risk to the administration of justice?
 - 5a. If yes, what risks do you anticipate?
 - 5b. If yes, are there any practical steps which could be taken to minimise that risk?
6. Are there any aspects of first instance criminal proceedings for which such permission should not be granted?
7. If such permission is to be granted, should the consent of all participants to be **filmed** be a prerequisite to permission?
 - 7a. Alternatively, if such permission is to be granted, should assurances that the consent of all participants will be attained to be **broadcast** be a prerequisite to permission?
 - 7b. Would either prerequisite be overly restrictive for the educational benefit of allowing filming for documentary purposes?
 - 7c. If you consider that to require the consent of **all** participants to be filmed would be too restrictive, are there any particular participants

whose consent, either to filming or broadcast should nevertheless be obtained?

8. Do you think that there are any particular **types of first instance criminal trial** in which the consent of all participants should always be a prerequisite?
9. Do you consider that there should be any restriction on, or prerequisites for filming of **first instance civil proceedings** for documentary purposes?

Filming for subsequent news broadcast

10. Should the court allow filming of any criminal proceedings at first instance for this purpose?
 - 10a. If yes, what type of trial or aspects of the proceedings do you think could be filmed for this purpose?
 - 10b. If yes, are there any kind of proceedings which you think should **not** be filmed for this purpose?
 - 10c. If yes, are there any witnesses who should not be filmed for this purpose?
11. If permission is to be granted, should the consent of all participants be a prerequisite to such permission?

12. Are there practical measures that could allow more contemporaneous broadcasting of criminal proceedings without impacting on the proper administration of justice?
13. What is your view in respect of these matters in relation to the filming of **civil proceedings**?

Live transmission

14. To what extent do you consider that filming of **criminal trials at first instance** for live transmission is consistent with the proper administration of justice?
15. What are your views in relation to civil proceedings?

Structured approach to considering applications to film

16. During the course of the review it has become clear that whilst each application for filming must be considered on its merits, there would be benefit in a more structured approach to applications for filming. The review group was impressed by the New Zealand model. Do you think the New Zealand guidance (Appendix VIII) is a suitable model for Scotland?

Live, text-based communications

17. Do you consider that LTBC in **criminal proceedings at first instance** present any risk to the administration of justice?
 - 17a. If so what risks do you anticipate?
18. Can you suggest any practical measures which might allow LTBC whilst preserving the integrity of proceedings?
19. Do you consider there would be merit in the implementation of a register of approved people who may use LTBC from court?
 - 19a. Should those seeking entry on that register be required to complete a statement confirming awareness and understanding of the Contempt of Court Act 1981?

Appendix I: Terms of reference

The review is to:

- consider the terms of the 1992 Practice Note issued by Lord Hope and the subsequent notice issued in January 2012 by Lord Hamilton.
- consider the use of all media in all court proceedings. This will include the recording and broadcast of court proceedings whether visual or audio and the use of live, text-based communication.
- make recommendations to the Lord President as soon as practicable

In doing so, the review must have regard to the provisions of the Contempt of Court Act 1981 and how those provisions are used in Scotland. The review should explore the available evidence regarding the experiences, in Scotland and in other jurisdictions, of allowing recording and broadcasting of court proceedings.

Appendix II: Membership and Support of the Review Group

The Lord President asked the following judicial office holders to lead the review:-

Lady Dorrian (Chair)
Lord Bracadale
Lord Woolman
Sheriff Principal Mhairi Stephen
Sheriff Kevin Drummond

The review is being supported by:-

Legal advice and research

Christopher Nicholson, Deputy Legal Secretary to the Lord President
Julius Komorowski, Law Clerk to the Lord President

Media advice and research

Elizabeth Cutting, Head of Judicial Communications

Secretary to the review

Innes Fyfe, Head of Strategy and Governance, Judicial Office for
Scotland

Appendix III: Television in the Courts Notice on 6th August 1992

The Lord President has issued the following directions about the practice which will be followed in regard to requests by the broadcasting authorities for permission to televise proceedings in the Court of Session and the High Court of Justiciary.

(a) The rule hitherto has been that television cameras are not allowed within the precincts of the court. While the absolute nature of the rule makes it easy to apply, it is an impediment to the making of programmes of an educational or documentary nature and to the use of television in other cases where there would be no risk to the administration of justice.

(b) In future the criterion will be whether the presence of television cameras in the court would be without risk to the administration of justice.

(c) In view of the risks to the administration of justice the televising of current proceedings in criminal cases at first instance will not be permitted under any circumstances.

(d) Civil proofs at first instance do not normally involve juries, but the risks inherent in the televising of current proceedings while witnesses are giving their evidence justify the same practice here as in the case of criminal trials.

(e) Subject to satisfactory arrangements about the placing of cameras and to there being no additional lighting, which would make conditions in the court room intolerable, the televising of current proceedings at the appellate level in both civil and criminal cases may be undertaken with the approval of the presiding Judge and subject to such conditions as he may impose.

(f) Subject to the same conditions, ceremonies held in a court room may also be televised for the purpose of news broadcasting.

(g) The taking of television pictures, without sound, of Judges on the Bench - as a replacement for the still photographs currently in use - will be permitted with the consent of the Judge concerned.

(h) Requests from television companies for permission to film proceedings, including proceedings at first instance, for the purpose of showing educational or documentary programmes at a later date will be favourably considered. But such filming may be done only with the consent of all parties involved in the proceedings, and it will be subject to approval by the presiding Judge of the final product before it is televised.

Appendix IV: Television in the Courts Notice on 23rd January 2012

In a Notice dated 6 August 1992 it was explained that the then Lord President (Hope) had issued directions (to the Principal Clerk of Session and Justiciary) about the practice to be followed in regard to requests by the broadcasting authorities for permission to televise proceedings in the Court of Session and High Court of Justiciary; paragraph (h) of that Notice provides that filming might only be done with the consent of all parties involved in the proceedings.

The Lord President has today directed that, for a trial period, filming may be done without the consent of all parties but only where the production company and broadcaster have provided the presiding Judge with an undertaking that the final broadcast will not identify those who have not consented to the filming. In addition, no member of a jury may be filmed.

Appendix V: Timeline of permissions granted in Scotland

- 1992:** Lord Hope issued a Note outlining the conditions under which cameras could be allowed in court.
- 1994:** The BBC made a series of four programmes showing excerpts from trials in the High Court and Sheriff Court. This was the first time that cameras were allowed into a courtroom in Scotland and showed the judge, agents and some witnesses. Consent had to be obtained from all those participating before filming could be allowed.
- 1994:** Lord Hope was filmed delivering the decision in the George Beattie appeal (very limited filming).
- 1996:** BBC Reporting Scotland filmed the sentencing of two armed robbers when Lord Ross allowed cameras into the High Court in Edinburgh. The senior judge had branded the sentencing system in Scottish courts a "charade" because prisoners did not serve the full term and he invited the cameras in to witness his judgment. On that occasion, the whole court, including the two accused, was filmed. The judge also gave an interview after sentencing in which he explained his concerns about early release. This footage was not pooled.
- 1998:** The first appeal of TC Campbell and Joe Steele, the men convicted of the ice cream war murders, was filmed.
- 2002:** Abdelbaset Al Megrahi's (the Lockerbie bomber) appeal against his conviction was filmed and broadcast.
- 2003:** Lion TV, on behalf of The BBC, filmed in Glasgow Sheriff Court as they followed a number of accused through the justice system. However, one of the accused withdrew consent after the documentary was made and before it was broadcast. This was the subject of a petition to the court to over-rule this and allow broadcast to take place. The BBC was not successful and the final documentary had to be heavily edited.
- 2006:** Edinburgh Sheriff Court was used for the purpose of filming a documentary about the Procurator Fiscal Service as they went about their daily business in and out of court.

- 2008:** In the Criminal Appeal Court, Lord Justice Clerk Gill read a summary of the court's decision in *Nat Fraser v HMA* and the other two judges read a short additional note. This was followed shortly afterward by a similar broadcast in *Luke Mitchell v HMA*. Lord Justice General Hamilton read out a summary of the court's decision. In both cases a short guidance note was issued to the media, setting out the basis on which this was allowed. In both cases proceedings were filmed and broadcast immediately afterwards on a pooled basis.
- 2008:** Abdelbaset Al Megrahi applied to the court to be granted bail pending his appeal against conviction. BBC applied for permission to be present in court to film the decision and the Lord Justice General granted it. The Lord Justice General read a summary of the decision and the defence counsel, Miss M. E. Scott, gave permission to be filmed as she responded to the court's decision not to grant bail.
- 2009:** Permission was granted to Glasgow Films to film in the Drug Court in Glasgow. This focused on Sheriff Lindsay Wood as he addressed a number of accused in court and demonstrated the particular approach taken by that court in dealing with drug related offending. It was part of a documentary on the rise of crack cocaine use in Scotland. The same year the BBC was granted permission to film in the Domestic Abuse Court in Glasgow as part of a wider documentary on domestic violence in Scotland. The footage showed only the sheriff (Sheriff Susan Raeburn) as she addressed the accused and agents in court.
- 2011:** Windfall Films on behalf of Channel 4 were given permission to film a number of High Court trials. A steering group was established to oversee this project and advise the Lord President. The Practice Note issued by Lord Hope in 1992 guided this process. The stipulation that consent be obtained from all those appearing in court before filming could be allowed proved to be a barrier to any progress being made in this project. Thus in January 2012 the Lord President, on advice from the judicially led steering group, revised the Practice Note to allow filming to take place if the trial judge and a sufficient number of people were willing to participate and to edit out those who did not wish to appear in any future broadcast.

Appendix VI: UK Supreme Court Policy on LTBC

THE SUPREME COURT OF THE UNITED KINGDOM (UKSC) POLICY ON THE USE OF LIVE TEXT-BASED COMMUNICATIONS FROM COURT

The legislation which applies to the UKSC, and the types of cases heard, are materially different from that which applies to the courts in England and Wales, Scotland and Northern Ireland.

The UKSC has been specifically exempted from the statutory prohibitions on broadcasting and photography which apply in England and Wales and Northern Ireland. There is no such prohibition in Scotland. This is to allow for the broadcast of proceedings via the permanent camera equipment installed in the UKSC courtrooms. Court visitors themselves are prohibited from taking photographs or filming proceedings in the UKSC, and nothing in this policy should be read as relaxing that rule.

The cases which come before the UKSC do not involve interaction with witnesses or jurors; and it is rare for evidence to be adduced which may then be heard in other courts. In addition the building used by the UKSC has been fully Wi Fi enabled, including all the courtrooms, in order to facilitate use of technology in and outside court.

Subject to the exemptions which are outlined below, any member of a legal team or member of the public is free to use text-based communications from court, providing (i) these are silent; and (ii) there is no disruption to the proceedings in court. No one present in a courtroom is permitted to use a mobile device to make a telephone call, or to receive such a call. If any telephone or other device rings in court the person may be asked to leave by a security guard.

The exceptions are:

1. Where reporting restrictions have been put in place by the court, those must be observed by everyone present in the court. Under these circumstances, the use of live text-based communications which makes information about proceedings public will not be permitted.
2. In a case involving a child, where anonymity is of the essence, text-based communications will be permitted, but any breach of the anonymity will be treated as a contempt of court.
3. In rare cases, the UKSC may order that a judgment should not be reported in order not to influence other proceedings taking place in the lower court. In such instances, no live text-based communication about the outcome will be permitted.

Such exceptions will be notified to court visitors by a notice at the door of the courtroom, and, where appropriate, by verbal instructions from a Justice.

**The Supreme Court of the United Kingdom
February 2011**

Appendix VII: California State Rules on Photographing, recording, and broadcasting in court

Rule 1.150.

(a) Introduction

The judiciary is responsible for ensuring the fair and equal administration of justice. The judiciary adjudicates controversies, both civil and criminal, in accordance with established legal procedures in the calmness and solemnity of the courtroom. Photographing, recording, and broadcasting of courtroom proceedings may be permitted as circumscribed in this rule if executed in a manner that ensures that the fairness and dignity of the proceedings are not adversely affected. This rule does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings.

(b) Definitions

As used in this rule:

(1) “Media coverage” means any photographing, recording, or broadcasting of court proceedings by the media using television, radio, photographic, or recording equipment.

(2) “Media” or “media agency” means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, in-house publication, professional journal, or other news-reporting or news-gathering agency.

(3) “Court” means the courtroom at issue, the courthouse, and its entrances and exits.

(4) “Judge” means the judicial officer or officers assigned to or presiding at the proceeding, except as provided in (e) (1) if no judge has been assigned.

(5) “Photographing” means recording a likeness, regardless of the method used, including by digital or photographic methods. As used in this rule, photographing does not include drawings or sketchings of the court proceedings.

(6) “Recording” means the use of any analog or digital device to aurally or visually preserve court proceedings. As used in this rule, recording does

not include handwritten notes on the court record, whether by court reporter or by digital or analog preservation.

(7) “Broadcasting” means a visual or aural transmission or signal, by any method, of the court proceedings, including any electronic transmission or transmission by sound waves.

(c) Photographing, recording, and broadcasting prohibited

Except as provided in this rule, court proceedings may not be photographed, recorded, or broadcast. This rule does not prohibit courts from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within the courthouse or between court facilities if the broadcasts are controlled by the court and court personnel.

(d) Personal recording devices

The judge may permit inconspicuous personal recording devices to be used by persons in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device must obtain advance permission from the judge. The recordings must not be used for any purpose other than as personal notes.

(e) Media coverage

Media coverage may be permitted only on written order of the judge as provided in this subdivision. The judge in his or her discretion may permit, refuse, limit, or terminate media coverage. This rule does not otherwise limit or restrict the right of the media to cover and report court proceedings.

(1) Request for order

The media may request an order on Media Request to Photograph, Record, or Broadcast (form MC-500). The form must be filed at least five court days before the portion of the proceeding to be covered unless good cause is shown. A completed, proposed order on Order on Media Request to Permit Coverage (form MC-510) must be filed with the request. The judge assigned to the proceeding must rule on the request. If no judge has been assigned, the request will be submitted to the judge supervising the calendar department, and thereafter be ruled on by the judge assigned to the proceeding. The clerk must promptly notify the parties that a request has been filed.

(2) Hearing on request

The judge may hold a hearing on the request or may rule on the request without a hearing.

(3) Factors to be considered by the judge in ruling on the request, the judge is to consider the following factors:

(A) The importance of maintaining public trust and confidence in the judicial system;

(B) The importance of promoting public access to the judicial system;

(C) The parties' support of or opposition to the request;

(D) The nature of the case;

(E) The privacy rights of all participants in the proceeding, including witnesses, jurors, and victims;

(F) The effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding;

(G) The effect on the parties' ability to select a fair and unbiased jury;

(H) The effect on any ongoing law enforcement activity in the case;

(I) The effect on any unresolved identification issues;

(J) The effect on any subsequent proceedings in the case;

(K) The effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;

(L) The effect on excluded witnesses who would have access to the televised testimony of prior witnesses;

(M) The scope of the coverage and whether partial coverage might unfairly influence or distract the jury;

(N) The difficulty of jury selection if a mistrial is declared;

(O) The security and dignity of the court;

(P) Undue administrative or financial burden to the court or participants;

(Q) The interference with neighboring courtrooms;

(R) The maintenance of the orderly conduct of the proceeding; and

(S) Any other factor the judge deems relevant.

(4) Order permitting media coverage

The judge ruling on the request to permit media coverage is not required to make findings or a statement of decision. The order may incorporate any local rule or order of the presiding or supervising judge regulating media activity outside of the courtroom. The judge may condition the order permitting media coverage on the media agency's agreement to pay any increased court-incurred costs resulting from the permitted media coverage (for example, for additional court security or utility service). Each media agency is responsible for ensuring that all its media personnel who cover the court proceeding know and follow the provisions of the court order and this rule.

(5) Modified order

The order permitting media coverage may be modified or terminated on the judge's own motion or on application to the judge without the necessity of a prior hearing or written findings. Notice of the application and any modification or termination ordered under the application must be given to the parties and each media agency permitted by the previous order to cover the proceeding.

(6) Prohibited coverage

The judge may not permit media coverage of the following:

- (A) Proceedings held in chambers;
- (B) Proceedings closed to the public;
- (C) Jury selection;
- (D) Jurors or spectators; or
- (E) Conferences between an attorney and a client, witness, or aide; between attorneys; or between counsel and the judge at the bench.

(7) Equipment and personnel

The judge may require media agencies to demonstrate that proposed personnel and equipment comply with this rule. The judge may specify the placement of media personnel and equipment to permit reasonable media coverage without disruption of the proceedings.

(8) Normal requirements for media coverage of proceedings

Unless the judge in his or her discretion orders otherwise, the following requirements apply to media coverage of court proceedings:

(A) One television camera and one still photographer will be permitted.

(B) The equipment used may not produce distracting sound or light. Signal lights or devices to show when equipment is operating may not be visible.

(C) An order permitting or requiring modification of existing sound or lighting systems is deemed to require that the modifications be installed, maintained, and removed without public expense or disruption of proceedings.

(D) Microphones and wiring must be unobtrusively located in places approved by the judge and must be operated by one person.

(E) Operators may not move equipment or enter or leave the courtroom while the court is in session, or otherwise cause a distraction.

(F) Equipment or clothing must not bear the insignia or marking of a media agency.

(9) Media pooling

If two or more media agencies of the same type request media coverage of a proceeding, they must file a joint statement of agreed arrangements. If they are unable to agree, the judge may deny media coverage by that type of media agency.

(f) Sanctions

Any violation of this rule or an order made under this rule is an unlawful interference with the proceedings of the court and may be the basis for an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions as provided by law.

Appendix VIII: New Zealand In-Court Media Coverage Guidelines 2012

1. Application of guidelines

These guidelines:

- a. apply to all proceedings in the Court of Appeal, the High Court and the District Court from 31 January 2012
- b. do not have legislative force
- c. do not create rights and should not be construed to create expectations
- d. replace the In-Court Media Coverage Guidelines 2003.

2. Purpose

1. These guidelines are intended to ensure that applications for in-court media coverage are dealt with expeditiously and fairly and that so far as possible like cases are treated alike.
2. In making decisions and exercising discretions under these guidelines, the court may have regard to the following matters:
 - a. the need for a fair trial
 - b. the desirability of open justice
 - c. the principle that the media have an important role in the reporting of trials as the eyes and ears of the public
 - d. the importance of fair and balanced reporting of trials
 - e. court obligations to the victims of offences
 - f. the interests and reasonable concerns and perceptions of victims and witnesses.

3. Interpretation

1. For the purposes of these guidelines:
the court means the Court of Appeal or the High Court or the District Court.

cover means:

- a. film or
- b. take still photographs at or
- c. record.

film includes videotape.

judge includes an Associate Judge of the High Court.

media applicant means a member of the media who has applied under these guidelines to cover a trial.

member of the media means:

- a. a person who is in the court for the purpose of reporting on the proceedings and who is either subject to or employed by an organisation that is subject to –

- i. a code of ethics and
- ii. the complaints procedure of the Broadcasting Standards Authority or the Press Council or
- b. any other person reporting on the proceedings with the permission of the court.

official witness means:

- a. a witness giving evidence in his or her official capacity, as opposed to personal capacity or
- b. an expert witness.

publish means disseminate to the public in any form (and published and publication have corresponding meanings)

sexual case means a proceeding in respect of an offence against any of sections 128 to 142A and 144A of the Crimes Act 1961.

the standard conditions mean:

- a. in the case of an application to film, the conditions set out in Schedule 2
- b. in the case of an application to take still photographs, the conditions set out in Schedule 3
- c. in the case of an application to record, the conditions set out in Schedule 4.

trial includes:

- a. any criminal proceeding or any part thereof
- b. any civil proceeding or any part thereof
- c. any appeal or any part thereof.

video camera means any device capable of filming a trial and includes a television camera.

witness includes the accused in a criminal proceeding.

witness applicant means a witness who has made an application under guideline 12.

witness protection means protection as defined in guideline 11(3).

- 2. Where any word or expression in any rule or form in these guidelines is not defined in these guidelines but is defined in the High Court Rules, it has the meaning given to it in those rules, unless the context otherwise requires.

4. Discretion of the court

- 1. All matters relating to in-court media coverage are at the discretion of the court.
- 2. Guidelines 5 to 15 apply subject to subclause (1).

5. Electronic communication

- 1. This guideline applies to any electronic communication of information from inside the courtroom to outside the courtroom.

2. No such electronic communication shall take place other than by a member of the media.
3. Any such electronic communication must take place as unobtrusively as possible and in such a manner as not to interfere in any way with the running of the trial.
4. While the judge is sitting in court for chambers or in closed court, no such electronic communication must take place.
5. Information communicated electronically must not be published or be the subject of any publication until at least 10 minutes have elapsed.
6. Despite subclause (5), information communicated electronically may be published or be the subject of publication immediately or at any time:
 - a. if the trial is an appeal or
 - b. on the taking of a jury's verdict or
 - c. on a sentencing or
 - d. if it is the judge's summing up or
 - e. if the trial judge grants leave.
7. Copies of all publications of information communicated electronically or having such information as their subject must be retained until the conclusion of the trial or disposition of any subsequent appeal or any related proceedings. A copy must be supplied to the court if requested by the judge.

6. Making application

1. Any person who wishes to cover a trial must apply to the court where the trial is to take place on the prescribed form in Schedule 1.
2. Any such application should be lodged with the registrar of the court at least ten working days before the trial is due to start.
3. Any application lodged inside ten working days before the trial must contain an explanation for the delay and the reasons why it should be granted despite the delay.
4. On receipt of an application, the registrar must refer it promptly to:
 - a. the trial judge (or presiding judge in the case of the Court of Appeal)
 - b. counsel for the parties
 - c. any unrepresented party.
5. If the trial is a sexual case, counsel for the Crown must provide a copy to the complainant and obtain his or her views about it.
6. This guideline does not apply in relation to the District Court summary jurisdiction. See Appendix Two for the Protocol for the Application of the In-Court Media Coverage Guidelines to the District Court summary jurisdiction.

7. Response to application

1. Within three working days of receipt of an application, any party receiving it must notify the registrar, the media applicant and the other parties in writing:
 - a. that the application is not opposed or
 - b. that the application is opposed (in whole or in part) and the reasons for the opposition.
2. In sexual cases, the Crown must notify the registrar of the complainant's views about the application.

8. Decisions in sexual cases

1. If the trial is a sexual case and if the complainant opposes the application, the judge will decline the application on the papers.
2. If the trial is a sexual case and if the complainant supports the application only on condition, the judge must have special regard for the views of the complainant.
3. Guidelines 9 to 12 are subject to subclauses (1) and (2).

9. Decisions on the papers

1. A judge may decline an application on the papers if it is lodged inside ten working days before trial.
2. A judge may grant an application on the papers if:
 - a. all parties have advised their consent or non-opposition or
 - b. the time for notifying any opposition has passed and no party has given notice of any opposition.
3. In all other cases, it is appropriate that there be a hearing of the application, in a manner directed by the judge.

10. Decisions after hearing

1. At any hearing, the media applicant may appear in person, by a representative or by counsel.
2. The parties may appear in person or by counsel.
3. In considering the application, the judge may have regard to:
 - a. the principles set out in guideline 2
 - b. the standing of the media applicant or the media applicant's employer
 - c. the nature of the trial
 - d. any other relevant matters.
4. The judge hearing the application may:
 - a. grant authority to film the trial or take still photographs at the trial or record the trial, as the case may be, on the standard or other conditions or
 - b. decline the application.

11. Witness protection as of right in criminal trials

1. Except in the case of the accused or an official witness (who may apply under guideline 12), witness protection is available as of right in a criminal trial for any witness who seeks it.
2. Witness protection under this rule may be sought by notification to the presiding judge at any time prior to the witness commencing to give evidence.
3. Witness protection means that the media applicant:
 - a. in the case of film, must ensure that the witness, if published or broadcast giving evidence, is not recognisable
 - b. in the case of still photographs, must not photograph the witness while he or she is in court or giving evidence.
4. Authority to cover the trial is subject to witness protection granted under this guideline.

12. Additional discretionary witness protection

1. This guideline applies to all witnesses in criminal trials (including official witnesses and the accused) and to all witnesses in civil trials.
2. Any witness or the party proposing to call the witness may apply by letter to the registrar of the court in which the trial is to be held for a ruling that the witness not be filmed, photographed or recorded.
3. The application must be lodged at least three clear working days before the trial is due to start provided:
 - a. the defence in a criminal case may apply orally to the presiding judge as soon as possible after electing to give or call evidence
 - b. the judge may decide to consider any other application even if the three day time limit is not met.
4. Where written application is made under this rule, the applicant must promptly notify all other parties and any person seeking or granted authority to cover the trial.
5. On an application under this guideline, the judge may hear from the applicant, the parties, and any person seeking or granted authority to cover the trial, but is not obliged, in the case of an application made during the trial, to defer ruling on the application because any person granted authority to cover the trial is not present.
6. In considering the application, the judge may have regard to:
 - a. the principles set out in guideline 2
 - b. whether covering the trial is likely to affect adversely the quality of the evidence to be given by the witness
 - c. whether the presence of a video camera, a photographer or a sound recorder is likely to lead to the witness not turning up to give evidence

- d. whether being filmed, photographed or recorded may cause undue stress or anxiety to the witness
 - e. whether being filmed, photographed or recorded may lead to intimidation or harassment of the witness
 - f. whether the witness's privacy interests outweigh the public interest in publishing or broadcasting that witness's evidence, given the likely significance of the evidence
 - g. any other relevant matters.
7. The judge may rule that:
- a. any person covering the trial:
 - i. must not film the witness while he or she is in court or giving evidence
 - ii. must not film the witness anywhere between the time of the ruling and the end of the trial
 - iii. must not photograph the witness while he or she is in court or giving evidence
 - iv. must not photograph the witness anywhere between the time of the ruling and the end of the trial
 - v. must not record the witness while he or she is in court or giving evidence
 - vi. must not record the witness anywhere between the time of the ruling and the end of the trial
 - vii. may film the witness but must ensure that the witness, if published or broadcast giving evidence, is not recognisable.
 - b. the witness's application is declined.

8. Where the judge makes a ruling under subclause (7)(a), authority to cover the trial is subject to that ruling.

9. Where the judge makes a ruling in terms of subclause (7)(a)(i) or (ii), the video camera must be either removed from the court while the witness is giving evidence or turned away from the witness so that it is apparent to the witness that he or she is not being filmed.

13. Name suppression and statutory prohibitions

An authority granted to cover a trial is subject to any statutory prohibition or court ordered prohibition on the publication of names or particulars or evidence under the Criminal Justice Act 1985 or otherwise.

14. Revocation of authority to cover a trial

The judge may at any time revoke authority to cover a trial if:

- a. the media applicant or someone acting on behalf of the media applicant breaches these guidelines or any condition of the grant of authority to cover the trial or

- b. the judge determines that the rights of any participant in the trial or the accused's right to a fair trial may or will be prejudiced if coverage continues or
- c. coverage of the trial is disrupting the proceedings.

15. Minimum conditions

1. The conditions on which authority to cover a trial are granted are minimum conditions.
2. The media applicant, and those acting on behalf of the media applicant, must at all times ensure that they do not commit contempt. In particular, they must ensure that they:
 - a. do not interfere with the due administration of justice
 - b. do nothing that may prejudice a fair trial.

16. Method of communication

Any written application or response under these guidelines may be delivered, posted, faxed or emailed.

SCHEDULE 2 – STANDARD CONDITIONS FOR FILM

1. Only one camera may be situated in the courtroom, regardless of how many people are given authority to film. In the event there is a dispute between those authorised to film as to whose camera will be situated in the courtroom, the judge will rule.
2. The camera must be situated in a position approved by the judge.
3. Any person wishing to instruct the camera operator during a court session must sit next to the camera operator and must give any instructions as unobtrusively as possible and in such a manner as not to interfere in any way with the running of the trial.
4. While the judge is sitting in court for chambers or in closed court, no filming must take place.
5. No juror may be deliberately filmed and no publication or broadcast may show the jury or any member of it.
6. Members of the public attending the trial or a view must not be filmed in the courtroom or in the course of the view.
7. Counsel's papers must not be filmed.
8. Exhibits must not be filmed without leave of the judge.
9. Subject to any protection granted to the accused as a witness under guideline 12, the accused may be filmed only:
 - a. when giving evidence or
 - b. when sitting in the dock, for the first 15 minutes of any sitting day, except when, during that period, a verdict is being taken or a sentencing is underway or

- c. at any time during the trial, including the time when the jury is taking a view or delivering its verdict, if the accused consents in writing through his or her counsel and the judge does not prohibit such filming or
 - d. during sentencing, if the judge grants leave.
10. No filming may take place in court when the judge is not present, except with prior leave of the judge.
11. The media applicant and representatives of the media applicant must at all times conduct themselves in court appropriately.
12. Film taken must not be published or broadcast until at least 10 minutes have elapsed.
13. Despite paragraph 12, film taken may be published or broadcast live or at any time:
- a. if the trial is an appeal or
 - b. on the taking of a jury's verdict or
 - c. on a sentencing or
 - d. if it is the judge's summing up or
 - e. if the judge grants leave.
14. The media applicant must maintain a copy of all publications or broadcasts using film taken in court or at a view and must supply a copy to the court if requested by the judge.
15. Film taken must not be used, while the trial continues, other than in the programme or on the website nominated in the application form.
16. Film taken must be used having regard to the importance of fair and balanced reporting of trials, and must not be published or broadcast out of context.

SCHEDULE 3 – STANDARD CONDITIONS FOR STILL PHOTOGRAPHS

1. The photographer must be situated in a position approved by the judge.
2. Any person wishing to instruct the photographer during a court session must sit next to the photographer and must give any instructions as unobtrusively as possible and in such a manner as not to interfere in any way with the running of the trial.
3. While the judge is sitting in court for chambers or in closed court, photographs must not be taken.
4. No juror may be deliberately photographed and no photograph published may show the jury or any member of it.
5. Members of the public attending the trial or a view must not be photographed in the courtroom or in the course of the view.
6. Counsel's papers must not be photographed.
7. Exhibits must not be photographed without leave of the judge.

8. Subject to any protection granted to the accused as a witness under guideline 12, the accused may be photographed only:
 - a. when giving evidence or
 - b. when sitting in the dock, for the first 15 minutes of any sitting day, except when, during that period, a verdict is being taken or a sentencing is underway or
 - c. at any time during the trial, including the time when the jury is taking a view or delivering its verdict, if the accused consents in writing through his or her counsel and the judge does not prohibit such photographing
 - d. during sentencing, if the judge grants leave.
9. No photographs may be taken in court when the judge is not present, except with prior leave of the judge.
10. The media applicant and representatives of the media applicant must at all times conduct themselves in court appropriately.
11. Photographs taken must not be used, while the trial continues, other than in the print media or online content published by the media applicant.
12. Photographs taken must be used having regard to the importance of fair and balanced reporting of trials, and must not be published or broadcast out of context.

SCHEDULE 4 – STANDARD CONDITIONS FOR RECORDING

1. While the judge is sitting in court for chambers or in closed court, no recording must take place.
2. Jurors must not be recorded in the courtroom or elsewhere other than when the foreperson of the jury delivers the jury's verdict.
3. No recording may take place in court when the judge is not present, except with prior leave of the judge.
4. The media applicant and representatives of the media applicant must at all times conduct themselves in court appropriately.
5. Recording taken must not be published or broadcast until at least ten minutes have elapsed.
6. Despite paragraph 5, recording taken may be published or broadcast live or at any time:
 - a. if the trial is an appeal or
 - b. on the taking of a jury's verdict or
 - c. on a sentencing or
 - d. if it is the judge's summing up or
 - e. if the trial judge grants leave.
7. The media applicant must maintain a copy of all publications or broadcasts using recording taken in court and must supply to the court

a copy of any publication or broadcast or a transcript of any publication or broadcast or both, if requested by the judge.

8. Recording taken must not be used, while the trial continues, other than in the programme or on the website nominated in the application form.
9. Recordings taken must be used having regard to the importance of fair and balanced reporting of trials, and must not be published or broadcast out of context.

Appendix IX: Bibliography

Authorities

R v Sussex Justices ex parte McCarthy [1924] 1 KB 256

Scott v Scott [1913] AC 417

South African Broadcasting Corporation Limited v Thatcher [2005] 4 All SA 353

BBC, Petitioners (No 2) 2000 JC 521

Tarsasag A Szabadsagjogokert v Hungary (2011) 53 EHRR 130

Canadian Broadcasting Corp. v. Canada (Attorney General) [2011] 1 SCR 19

Legislation

Courts of Justice Act 1990

Contempt of Court Act 1981

Crime and Courts Act 2013

Other Documents

Cohn & Dow (2002), *Cameras in the Courtroom: television and the Pursuit of Justice*

Federal Court of Canada (2012) *Policy on Public and Media Access* (available at: http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/MediaPolicy)

House of Lords (13 February 2013), *The Select Committee on the Constitution*

Johnson & Krafka (1994), *Electronic Media Coverage of Federal Civil Proceedings: An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeals*,

Judicial Conference of the United States (20 September 1994) *Report of the Proceedings of the Judicial Conference of the United States*

Judicial Council of California (2000) *Cameras in the Courtroom: Report on Rule 980*,

Judicial Office for England and Wales (2011) *Practice Guidance: The Use of Live Text-Based Forms of Communication (including Twitter) from Court for the Purposes of Fair and Accurate Reporting*. (available at: <http://www.judiciary.gov.uk/Resources/ICO/Documents/Guidance/litbc-guidance-dec-2011.pdf>)

Judicial Office for Scotland. (2011) *Use of Live Text Based Communication from Court*. (available at: <http://www.scotland-judiciary.org.uk/24/839/Use-of-live-text-based-communication-from-court>)

Lady Justice Smith, *Shipman Inquiry*, 25 October 2001;

Lord Hutton, *Investigation in to the Circumstances surrounding the death of Dr David Kelly*, 5 August 2003.

Mason (2000), *Report on the Impact of Electronic Media Coverage of Court Proceedings at International Criminal Tribunal for the former Yugoslavia*

Stepniak (2008), *Audio-Visual Coverage of the Courts: A comparative analysis*.

Ontario Ministry of the Attorney General (2008), *Final Report on the Cameras in the Ontario Court of Appeal Pilot Project*

McLachlin (2012), *The Relationship Between the Courts and the Media*

New Zealand Ministry of Justice (2012) *In-Court Media Coverage Guidelines* (available at: <<http://www.justice.govt.nz/media/media-information/media-guide-for-reporting-the-courts-3rd-Ed/appendices/appendix-1-in-court-media-coverage-guidelines-2012>>.)

Scottish Parliament (2 October 2012) *Justice Committee official report*

Cameras and live text-based communication in the Scottish courts: a consultation

Appendix X: Consultation Response Form

RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately. This form is available separately on the Judiciary of Scotland website.

If you hold Judicial Office, please specify:	
Title (Mr, Ms, Sheriff etc.)	
Surname	
Forename	
Postal Address	
Phone Number on which we may contact you.	
Email address at which we may contact you.	

Confidentiality

If you would like your responses to be treated as confidential please indicate this clearly. Responses from those who reply in confidence will only be included in numerical totals and names and text will not appear in the list of respondents.

Please return the completed respondent information form and your response to the consultation by **31 January 2014**

to: mediareview@scotcourts.gov.uk or

Media Review Responses
Judicial Office for Scotland
-3/R11 Parliament House
Edinburgh
EH1 1RQ

Cameras and live text-based communication in the Scottish courts: a consultation

Consultation questions

The review group is interested to elicit a broad range of responses to this consultation. It would be appreciated if in giving your response to the consultation you provide answers in the format set out. However, if you have other comments to make, you may provide them in addition. This form is available separately in MS Word format on the Judiciary of Scotland website.

Appeals and legal debate

1. Do you perceive any risk to the administration of justice in allowing filming of **legal debate** in the following proceedings and for the following purposes?

proceeding	purpose		
	documentary programme	news broadcast	live transmission
civil first instance	Yes No	Yes No	Yes No
civil appeals	Yes No	Yes No	Yes No
criminal appeals	Yes No	Yes No	Yes No

Please answer yes or no by deleting as appropriate (or circling your response if hard copy)

2. If you have answered yes to any combination, what risks do you anticipate? Please specify if the risks you have identified pertain to one or more combination(s).

3. Are there any steps which could be taken to minimise such risks?

Filming of first instance proceedings for documentary purposes

4. Should the court allow filming of criminal proceedings at first instance for documentary purposes?

Yes No *Please answer yes or no by deleting as appropriate (or circling your response if hard copy)*

5. Does filming for documentary purposes carry with it any risk to the administration of justice?

Yes No *Please answer yes or no by deleting as appropriate (or circling your response if hard copy)*

- 5a. If yes, what risks do you anticipate?

Cameras and live text-based communication in the Scottish courts: a consultation

5b. If yes, are there any practical steps which could be taken to minimise that risk?

6. Are there any aspects of first instance criminal proceedings for which such permission should not be granted?

7. If such permission is to be granted, should the consent of all participants to be **filmed** be a prerequisite to permission?

7a. Alternatively, if such permission is to be granted, should assurances that the consent of all participants will be attained to be **broadcast** be a prerequisite to permission?

7b. Would either prerequisite be overly restrictive for the educational benefit of allowing filming for documentary purposes?

7c. If you consider that to require the consent of **all** participants to be filmed would be too restrictive, are there any particular participants whose consent, either to filming or broadcast should nevertheless be obtained?

Cameras and live text-based communication in the Scottish courts: a consultation

8. Do you think that there are any particular **types of first instance criminal trial** in which the consent of all participants should always be a prerequisite?

9. Do you consider that there should be any restriction on, or prerequisites for filming of **first instance civil proceedings** for documentary purposes?

Filming for subsequent news broadcast

10. Should the court allow filming of any criminal proceedings at first instance for this purpose?

Yes No *Please answer yes or no by deleting as appropriate (or circling your response if hard copy)*

- 10a. If yes, what type of trial or aspects of the proceedings do you think could be filmed for this purpose?

- 10b. If yes, are there any kind of proceedings which you think should **not** be filmed for this purpose?

- 10c. If yes, are there any witnesses who should not be filmed for this purpose?

Cameras and live text-based communication in the Scottish courts: a consultation

11. If permission is to be granted, should the consent of all participants be a prerequisite to such permission?

Yes No Please answer yes or no by deleting as appropriate (or circling your response if hard copy)

Please explain the reasons for your opinion.

12. Are there practical measures that could allow more contemporaneous broadcasting of criminal proceedings without impacting on the proper administration of justice?

13. What is your view in respect of these matters in relation to the filming of **civil proceedings**?

Live transmission

14. To what extent do you consider that filming of **criminal trials at first instance** for live transmission is consistent with the proper administration of justice?

15. What are your views in relation to civil proceedings?

Cameras and live text-based communication in the Scottish courts: a consultation

Structured approach to considering applications to film

16. During the course of the review it has become clear that whilst each application for filming must be considered on its merits, there would be benefit in a more structured approach to applications for filming. The review group was impressed by the New Zealand model. Do you think the New Zealand guidance (Appendix VIII) is a suitable model for Scotland?

Yes No *Please answer yes or no by deleting as appropriate (or circling your response if hard copy)*

Please explain the reasons for your opinion.

Live, text-based communications

17. Do you consider that LTBC in **criminal proceedings at first instance** present any risk to the administration of justice?

Yes No *Please answer yes or no by deleting as appropriate (or circling your response if hard copy)*

- 17a. If so what risks do you anticipate?

18. Can you suggest any practical measures which might allow LTBC whilst preserving the integrity of proceedings?

19. Do you consider there would be merit in the implementation of a register of approved people who may use LTBC from court?

Yes No *Please answer yes or no by deleting as appropriate (or circling your response if hard copy)*

Please explain the reasons for your opinion.

Cameras and live text-based communication in the Scottish courts: a consultation

19a. Should those seeking entry on that register be required to complete a statement confirming awareness and understanding of the Contempt of Court Act 1981?

Yes No *Please answer yes or no by deleting as appropriate (or circling your response if hard copy)*

Please explain the reasons for your opinion.

Thank you for your response to the consultation.