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# Karen K. List: Why courts are still leery of the media

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AMHERST - Fans of Twitter and live blogging must have been excited about this month's proposed revisions governing the use of new technology in Massachusetts courtrooms.

But they shouldn't get too excited just yet.

The Supreme Judicial Court has suggested new rules allowing journalists to use laptop computers and other electronic devices while court is in session, providing the technology is not disruptive.

These rules are "designed to reflect the dramatic changes ... in the news media industry," according to the Boston Globe, and "to strike a balance between journalism in the 21st century and security concerns in criminal trials."

Those are laudable goals, but the truth is that many courts, including the Supreme Court, have never gotten comfortable with 20th-century journalism, let alone 21st.

The Supreme Court has never allowed camera coverage of its proceedings, and even audio recordings are fairly recent. Massachusetts courts allow only two cameras - one still camera for newspapers and one video camera for television. Cellphones with cameras are banned.

These strict controls on courtroom coverage stem from circus-like trials in the early 20th century in which questions were raised about media coverage interfering with a defendant's right to a trial by an impartial jury.

The Supreme Court has overturned criminal convictions three times because of such coverage. The court has argued that if a case is tried in the media as opposed to the courtroom, potential jurors and those selected to serve can be prejudiced to the extent that they can't come to a fair decision.

The 1966 landmark case on these free press versus fair trial questions is that of Sam Sheppard, an Ohio doctor charged with murdering his wife. Sheppard always insisted he was not guilty and that he had seen a bushy-haired man flee the house. This is the case on which "The Fugitive," both the television series and the movie, was based, with the bushy-haired man transformed into a one-armed killer.

Media coverage of the Sheppard trial was massive and biased against the doctor from the start. Newspapers published front-page editorials on his guilt, along with the names and addresses of 75 prospective jurors, all of whom received calls and letters encouraging them to convict.

Throughout the trial, reporters handled exhibits, interacted with jurors and snapped photos, creating what the Supreme Court described as "a carnival atmosphere" that deprived Sheppard of the "judicial serenity and calm to which he was entitled." His conviction was overturned.

Ultimately, however, the court held the judge - not the media - responsible, and many judges since have carefully controlled media coverage in their courtrooms. Many will be nervous about Twitter and live blogging, not to mention additional cameras.

And attorneys will have mixed feelings as well, as evidenced by the recent murder trial in Connecticut of Steven J. Hayes, who was found guilty of murdering a mother and her two daughters, raping one, then setting the house on fire.

The same week that the SJC announced its proposed changes for courtroom coverage, Hayes' attorneys filed an appeal, arguing in part that the 140,000 tweets from the courtroom created a "circus atmosphere." The jurors, they argue, were improperly influenced by public passion against the defendant, created in large part by Twitter's instantaneous and saturation reporting of inflammatory details.

The trial judge rejected the argument, saying that his courtroom was carefully controlled. The attorneys have appealed.

It will be years before this question and others like it will be decided by higher courts, but in the meantime, the SJC is seeking public feedback on its proposed changes for courtroom coverage - by mail. All you need is some paper and a stamp.

Someone should tweet that.

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