
# WHY PUTTING CAMERAS IN THE JURY ROOM IS NOT AS CRAZY AS YOU THINK

*by Alex Kozinski and John Major*

**PUBLIC INTEREST IN THE AMERICAN JURY SYSTEM IS AT AN ALL-TIME HIGH.** Late last year, NPR's hit podcast "Serial" pulled in over 1 million listeners per week as it recounted the real-life investigation and jury trial of Adnan Syed, a Muslim man accused of murdering his ex-girlfriend.[1] The case against Adnan was thin, based mostly on circumstantial evidence and seemingly polluted by racial undertones. The podcast gave many listeners a closer look at our justice system than they'd ever had before — and for some, it seriously shook their faith in the American jury.[2]

It left listeners wondering, "How in the world did that jury convict?" and "Did racism contribute to this man's conviction?" Along similar lines, some members of the public expressed shock (and sometimes outrage) when grand juries in Ferguson, Missouri, and New York City, tasked with investigating the deaths of black men at the hands of local police officers, failed to return indictments. Again, the public was left wondering what happened in the jury room.

That feeling isn't foreign to federal judges. Speculating about what might have happened behind a jury room's closed doors is a routine part of the job. We're often called upon to guess whether something affected a jury's verdict, and if so, how much. But unfortunately, like the public, we can't do much more than guess. Many aspects of judging require that sort of rumination — for example, reconstructing the past to understand the facts of a knotty case or discerning what Congress meant when it passed a particular statute. But in those circumstances, judges are equipped with resources to fill in the gaps in their knowledge. They can question lawyers or scrutinize expert reports to better understand how something unfolded. They can review the congressional record to piece together where a statute came from. In short, judges are usually given the tools they need to reach the correct outcome.

Not so when it comes to jury deliberations. What goes on behind the jury-room door is a black box to judges, penetrable only in exceptional circumstances. The tradition of jury-room secrecy is one of the oldest and most rigorously protected traditions in the American justice system. Attempts to intrude on jury deliberations have led to congressional action, public outcry, and constitutional concerns. Yet sometimes, questions like, "Why did the jury convict here?" or "How much weight did the jury put on that evidence?" can mean the difference between life and death.[3] Judges answer these questions with both hands tied behind their back because the most useful evidence — what actually happened in the jury room — is avail-

able only in limited circumstances and will frequently be colored by jurors' predilections or prejudices.

## A SYSTEM IN NEED OF SOME REPAIR

The tradition of secret jury deliberations stretches back centuries. As early as 1785, an English tribunal refused to hear evidence indicating that a jury decided a case based on a game of chance.[4] Interests of finality outweighed interests of justice. That balance was struck in part because of the jury's somewhat mystical nature: "The jury, like the ordeals of water and fire that it replaced, was supposed to reach a verdict mysteriously."[5] Jury secrecy then found roots in American jurisprudence in 1915, when the Supreme Court explained that interference with such secrecy might lead "to the destruction of all frankness and freedom of discussion and conference" in the jury room.[6] The Court has gone on to repeatedly emphasize the "weighty government interest in insulating the jury's deliberative process."[7] The secrecy of jury deliberations purportedly protects "full and frank discussion in the jury room," maintains "jurors' willingness to return an unpopular verdict," and ensures "the community's trust in a system that relies on the decisions of laypeople."[8] Those values are so important that the Court has beaten back attempts to curtail jury secrecy with the admonition that "the jury system [might not] survive such efforts to perfect it."[9] And the tradition of jury secrecy remains alive and well today. Just last year, the Supreme Court reemphasized that "the use of deliberations evidence to challenge verdicts would represent a threat to both jurors and finality."[10]

But traditions change, particularly as courts adapt to new technology and use it to better the administration of justice. Take, for example, the phenomenon of cameras in the courtroom. In 1965, the Supreme Court held that filming trials violated due process. Chief Justice Warren wrote separately to stress that "the television camera, like other technological innovations, is not entitled to pervade the lives of everyone in disregard of constitutionally protected rights."[11] Justice Harlan concurred to note, however, that "the day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process."[12] That day came a mere 16 years later,[13] and today, many significant trials are beamed to televisions and computers across the country. In some states, like Iowa, a judge cannot ban cameras from the courtroom unless they would "materially interfere with the rights of the parties to a fair trial."[14]

Cameras in courtrooms have also moved up the judicial hierarchy. State supreme courts have been transmitting their oral arguments live for years, and some federal appellate courts — particularly the Second and Ninth Circuits — are starting to embrace such technology.[15] Previously, appellate arguments were only available in audio-cassette form long after argument, but now they can often be live streamed in audio or video format. The Ninth Circuit, for example, has steadily increased access to proceedings over the past decade. It started by providing online access to audio recordings of arguments shortly after the fact, then shifted to making video recordings available as well. And now, the Circuit is live-streaming all oral arguments in high definition. Members of the public have unprecedented access to how the court does business.

Even the Supreme Court has changed. Less than a quarter-century ago, audio tapes of oral argument could be listened to only at the Supreme Court or by loan, subject to a promise not to publish them.[16] Today, audio of Supreme Court arguments is available on the Court's website a few days after argument and, in exceptional cases, the same day a case is argued.[17]

These sorts of technological leaps have concrete, tangible effects. Take *Baca v. Adams*.[18] In that case, a Ninth Circuit panel expressed disdain for a particularly egregious instance of prosecutorial misconduct presented by a state prisoner's habeas petition. That expression of skepticism on behalf of the panel later led to the state of California sensibly moving to conditionally grant the habeas petition. There's little doubt that the Attorney General's office witnessing the judges' disapproval on video, rather than reading it off a transcript a week or more later, made some difference in that outcome.

Like other aspects of our justice system, the jury tradition has also evolved over time. In the early 1200s, juries functioned more like groups of witnesses than finders of fact, and were frequently chosen specifically because they had independent knowledge of a dispute. Their role was accordingly much different: They didn't sort between unfamiliar facts and decide what to believe; they provided the judge with facts, and he decided how to interpret them.[19] Of course, we now actively seek jurors unfamiliar with a case, for fear that their prior familiarity might bias their outlook. Perhaps this was inevitable, given that most people no longer live in small, close-knit communities, but it's not a clear improvement.

The composition of juries, too, has changed. An institution that once consisted of only land-owning men has evolved to include a diverse cross-section of society, and excluding jurors based on race or sex is now constitutionally prohibited. Even the minutia about how jurors operate in the courtroom has evolved. Well into the 1990s (and indeed, in some trial courts today), jurors weren't permitted to take notes during trials to assist them in deliberations. It seems almost fanciful that jurors grappling with unfamiliar facts and difficult-to-comprehend law

would be expected to do so without the aid of a notepad.[20] But that innovation can still be called a modern (and continuing) one.

These steps forward show that the American jury can survive and be strengthened by change. Yet juries have been, in large part, insulated from the positive change that technology has brought to other areas of our justice system. It's time for the jury to take another step forward. As Justice O'Connor observed in 1997 when discussing potential reforms to the jury system, "[t]he world is a very different place now than it was in 1220, or in 1789, or 50 years ago. We therefore should not be surprised to learn that aspects of the jury system that worked well in those times work less well today, and need some repairs."[21]

## NOT AS OUTLANDISH AS IT SEEMS

We propose a significant repair: Placing cameras in petit jury rooms throughout the country.[22] Camera technology has become less obtrusive, and it's now feasible to get high-quality picture from a very small piece of equipment. And it's possible to buy a great digital camera for less than $100, so price isn't a deterrent. The resulting mass of data could be cheaply stored on increasingly available cloud servers throughout the country. The video could be sequestered from public consumption. It would play a carefully limited role in appellate proceedings, courtroom administration, and research into juror behavior.

That proposal isn't as outlandish as it might seem. Cameras have made an appearance in jury rooms before. Back in 1986, jury deliberations in a Wisconsin criminal trial were taped and used in an episode of PBS's "Frontline" series. And in 1996, the Arizona Supreme Court granted CBS permission to film jury deliberations in several Arizona criminal trials. CBS aired the footage as part of a documentary that let the public "Inside the Jury Room." Notably, two important limits were placed on CBS's project: The court, the parties, and all the individual jurors consented to the filming, and the parties waived their right to use the film as a basis for an appeal. But still, that project resulted in unlocking the jury room not just to the court but to the public. As recently as 2004, jury deliberations have been broadcast to televisions across the country, with ABC airing a special called "In the Jury Room" that featured footage of deliberations in six murder trials from three states, one of which was a capital case.[23]

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Even outside those sporadic filmings, our petit jury system is far more permissive of intrusions into jury deliberations than that of some other countries. For example, in England, it's flatly forbidden to disclose the content of jury deliberations.[24] That rule has no exceptions, and has been criticized as overbroad for prohibiting disclosures of misconduct and research into jury behavior. Despite those concerns, the rule has resisted repeated attempts at reform. Other British Commonwealth countries, such as Canada and Australia, have similarly strict rules.

By contrast, our jury system permits extensive inquiry into petit jury deliberations, despite our ostensible commitment to their secrecy. Lawyers, the media, and anyone else can interview jurors following their deliberations and ask whatever they please.[25] In facing those inquiries, jurors receive little to no guidance from courts — and often disclose the entirety of what occurred in jury deliberations, sometimes even identifying specific statements made by other jurors.[26] One television program went so far as reenacting an entire jury deliberation after the fact. As such, jurors are already on notice that what they do in the jury room is subject to leaking out through their fellow jurors. Indeed, jurors occasionally write books or articles about the deliberations.[27]

Jurors also already face the prospect that what they say in the jury room might be used as evidence in court. For example, when there's an allegation of external influence on a jury's decision, courts are permitted to hear evidence attacking a jury's verdict, despite rules protecting jury-deliberation secrecy. Similarly, the cloak of jury secrecy doesn't protect jurors from dismissal for "good cause" under Federal Rule of Criminal Procedure 23(b) based on happenings in the jury room. That rule generally permits dismissal of jurors based on physical inability to continue or religious observance, but it has also been invoked based on jurors' inability to deliberate impartially — a determination that often requires a judge to take juror testimony to figure out what's really going on.[28]

Though this piece focuses on petit

jury secrecy, it's worth noting that our tradition of grand jury secrecy is even stronger. Grand jurors generally aren't permitted to disclose the content of their deliberations, even after they've completed their service. But that anti-disclosure regime is under attack. As mentioned, a grand jury in Ferguson, Mo., recently failed to indict a local police officer for shooting and killing a young black male while on duty. One of the grand jurors involved in that proceeding recently filed a lawsuit seeking permission to discuss the grand jury's deliberations, arguing that a prohibition on disclosure violates his free-speech rights. That disclosure would break the usual sworn-to-secrecy nature of such proceedings. The lawsuit is pending, but regardless of how it turns out, it reflects a potential shift in our society's attitude towards secret jury deliberations.

## THE ADVANTAGES OF CAMERAS IN THE JURY ROOM

In light of the disclosures that our petit jury system already tolerates, it's worth considering what would be lost and what could be gained by a protocol of routinely recording and preserving petit juror deliberations. It may well be that such a scheme would improve jury behavior, advance the way we adjudicate certain claims, permit much-needed research into improving the way jurors discharge their duties, and give judges and lawyers valuable feedback that would help them perform better in the future.

Placing cameras in jury rooms would reassure the public that the jury system is functioning as it should and that courts are working to prevent malfunctions in that process. Members of the public likely don't take much solace in a "what I don't know won't hurt me" approach to justice, particularly when hard evidence could instead confirm that jurors are diligently performing their role. Further, cameras in jury rooms would likely lead jurors to take that role more seriously. With jury deliberations generally rendered inscrutable, jurors know that their most, and often only, consequential act will be to tick boxes on a verdict form. The prospect of someone later checking their work, rather than just their outcome, would encourage a more thorough and careful deliberative process. It's human nature to work harder when someone might be looking over your shoulder. Everyone has felt the temptation to slack off when the boss's back is turned, or to take a shortcut when no one will find out. But the prospect that their sloth or misconduct will be captured on camera and potentially viewed later, even by a limited audience, might help keep jurors on task.

Beyond these general benefits, cameras in jury rooms would make adjudicating currently onerous legal questions far more manageable. Two examples immediately spring to mind, both involving situations where judges must step into the minds of jurors. Take first determining whether a particular trial error was harmless or prejudicial. Under current law, if certain types of error occurred before the jury — for instance, that a piece of evidence was improperly admitted — a reviewing court is faced with the unenviable task of guessing whether the error was prejudicial. Exact wording of the standard varies, but it often comes down to whether "there is a reasonable possibility that the improperly admitted evidence contributed to the conviction."[29] Answering that question forces judges to step into the minds of the jurors, even though many judges have never served as jurors. What turns out to be the key question in most criminal cases involving trial errors is decided based on a guess, and not a particularly educated one.

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With video footage of the jury itself, that endeavor turns from thought-experiment to investigation. It lets judges ask the far simpler question of whether certain evidence *in fact* had a harmful effect on the jury's decision-making process. It will often be quite clear from jury-room footage that a given piece of evidence was inconsequential, as would be the case if it didn't come up at all. By the same token, it might be that a seemingly minor piece of evidence served as the lynchpin for the verdict in the jury room. Of course, this new sort of legal standard would need to be carefully developed and calibrated over time, but once fully implemented, it would have considerable benefits.

This approach might also help curb the worrisome trend of judges upholding ill-gotten convictions in spite of egregious prosecutorial misconduct. Far too often, instances of prosecutorial misconduct are swept under the rug as nonprejudicial or harmless based on judicially crafted standards for prejudice that continue to ratchet upward in many contexts. Moving to a new approach could turn the tide, and discourage prosecutors from counting on tainted convictions being upheld on appeal. Armed with video from the jury room, we might see that juries are often far more influenced than we realize by the sort of prosecutorial malfeasance that is all too easily labeled inconsequential under current standards.[30]

Jury-room footage would also help judges adjudicate difficult-to-parse problems of juror misconduct or claims of outside influence. At present, a court presented with a claim that a jury was influenced by some external factor — say, a media report that made its way into the jury room — can usually rely on nothing more than juror testimony in sorting out the truth of that allegation. Judges are understandably hesitant to disturb verdicts based on mere say-so, particularly given the very real possibility that after-the-fact disclosures might be the result of mercy or post-verdict regret. But cameras in jury rooms provide an easily checked and promptly verifiable record of irregularities during the deliberation process, and remove the "he said, she said" nature of investigating those irregularities. Take, for example, a real case in which a district judge dismissed two jurors because he concluded they couldn't deliberate following a personal dispute. The judge had to predict, based on nothing more than their demeanor and testimony in the courtroom, whether their personal dispute would detract from deliberations in the jury room.[31]

Videos of deliberations would also be a useful research tool, providing insight into how well jurors are doing their jobs (and how well courts are doing theirs). First, they could elucidate whether jury instructions are functioning effectively. After all, jury instructions are the chief way that jurors link the evidence at trial to a legal outcome, yet we currently have little sense of how effectively jury instructions get their message across. By watching juries and seeing where they stumble and what they grasp, we could better formulate this essential piece of the litigation process. Videos of deliberations would also reveal whether jurors follow other court instructions during deliberations. Are jurors considering evidence that's been stricken? Do they listen to each other while deliberating? Do they understand how to fill out a verdict form?

Further, jury-room video would provide us with a better sense of how much juror misconduct is occurring. We currently have a narrow view of misconduct, based only on sporadic reports and potentially biased recollections. But with videotaped deliberations, we would better understand the scope of the juror misconduct problem — and if it was found to be significant, we could better craft a solution.

## POTENTIAL DOWNSIDES

Given these potential benefits, what might stop this sort of proposal from going forward? The answer differs depending on whether you look to the federal or state system, but the gist is this: Statutory prohibitions based on our tradition of jury secrecy often get in the way. For simplicity, we'll look to the federal system, in which videotaping jury deliberations is flatly illegal under current law. In 1956, Congress passed 18 U.S.C. § 1508, which imposes a blanket ban on "record[ing], or attempt[ing] to record, the proceedings of any grand or petit jury in any [federal court] while such jury is deliberating or voting." Congress imposed that ban after a group of social-science researchers recorded grand jury proceedings to better understand jury dynamics. That effort produced two things: a still-authoritative study of the American jury, and a concrete barrier to any future work along the same lines.

Then there's Federal Rule of Evidence 606(b), which, with limited exceptions, prohibits courts from "receiv[ing] … evidence of a juror's statement on [matters related to what occurred during deliberations]" when inquiring into the validity of a verdict. That rule is less of a hindrance to filming jury deliberations. It doesn't prevent such recordings; it just imposes a likely obstacle to using jury-room video as evidence in court. As such, the rule could remain in place until courts reach consensus on how to best use what's captured on jury-room cameras.

In the end, though, both of those impediments can probably be overcome without too much trouble, particularly at the urging of the judges whom they affect most. The real question is what the Constitution has to say. There's no clear constitutional prohibition on cameras in jury rooms. The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." The Seventh Amendment, along similar lines, preserves "the right of trial by jury" in civil cases. To determine whether "a certain feature of a jury system comports with constitutional requirements," we examine "the function that the particular feature performs and its relation to the purposes of the jury trial."[32] If a change to the jury system "presents a … threat to preservation of the substance of the jury trial guarantee," it cannot stand.[33]

So how do cameras fare under that standard? The question boils down to whether recording jury deliberations will threaten jury impartiality. The major concern is that "[f]reedom of debate might be stifled and independence of thought checked if . . . arguments and ballots were to be" recorded.[34] There's some heft to that argument — it's well recognized that individuals act differently when someone is watching.[35]

But the question isn't whether the presence of cameras will have any effect on the way a jury behaves — all sorts of things do that, including instructions from the judge and jurors' past experience. The question is whether cameras in the jury room will have a negative effect on a jury's ability to do its job, and more precisely, whether the *net* effect would be to make jury deliberations less fair.

That seems doubtful. In a society constantly using Tweets and Facebook posts to share vast amounts of personal information, it's unlikely that open debate would be stifled by the pros-

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pect of limited disclosure. Moreover, being on camera today is commonplace. People have come to expect it nearly every time they step out to the grocery store, so most members of the public probably aren’t affected by the presence of cameras the same way they might have been five or 10 years ago. Surveys based on state-court experiences with cameras in courtrooms reflect that reality. Witnesses and jurors, asked whether the presence of cameras caused them to act differently during a trial, indicated that the cameras faded into the background and made little difference.[36]

Risks to jurors’ frankness during deliberations would also be mitigated by the limited uses for the deliberation videos. As mentioned, there wouldn’t be any sort of free-wheeling right of public access. That sort of access might engender fear of personal or professional repercussions. But limited, sealed disclosure to lawyers, federal judges, and researchers simply won’t frighten jurors out of doing their job. How can we know that? Because currently permitted disclosures, in the form of post-verdict interviews to the public at large, don’t seem to present an existential threat to juror deliberations. If those disclosures don’t infringe the jury-trial right, far more limited disclosures wouldn’t either.

That said, there are potential downsides to putting cameras in jury rooms. The first is obvious: Jury-room video, like all evidence, would be subject to interpretation and might sometimes create as many questions as it answers. Would a single mention of a piece of evidence show that the jury relied on it? What about two? But those problems would be no worse than those faced by judges trying to put themselves into the shoes of hypothetical jurors. And trial judges are well adapted to the problems of drawing inferences from sometimes ambiguous statements and testimony.

There’s also the concern that cameras in jury rooms might lead to grandstanding or shyness among jurors. As mentioned, that was also a fear when cameras went into trial courts, but it’s been largely unrealized. The same claim was again made when the Ninth Circuit started placing cameras in appellate courtrooms, but that also hasn’t caused problems. The cameras are often forgotten and the lawyers do their job. Jurors, for the most part, would do the same.

Last, and perhaps most consequentially, there’s a worry that knowing more about what jurors are actually doing would undermine finality of verdicts and shake our faith in the jury system. But willful blindness to potential flaws is an odd justification for inaction. And it’s not a particularly persuasive one in light of studies suggesting that jurors by and large take their jobs seriously.[37] There need be no greater threat to the finality of verdicts than exists under current law. The use of jury-room footage could be carefully limited, much the way admission of juror testimony is limited. So the ways in which a verdict can be attacked wouldn’t necessarily expand; rather, the adjudication of those attacks would become simpler, with the quality of evidence vastly improved.

## A TEST-AND-LEARN APPROACH

Regardless of the potential merit of cameras in jury rooms, the key to the approach’s success would lie in its implementation. Successful implementation would require proceeding carefully, incrementally, and flexibly. The first step would be simple: Overcome statutory bans on recording jury deliberations, and then just start recording. It would be best to start with lower-stakes trials, perhaps with the consent of the parties, and with the explicit proviso that the product of this early taping couldn’t be used to attack a verdict. Once a fair amount of video was on hand, judges and researchers could take a look and see what’s there. There would be no shortage of researchers eager to comb through the film and analyze what they found.

This up-front analysis would serve a key role. First, it would give a sense of whether the undertaking is worth it — what are we seeing, and might it really help untangle some difficult cases? Further, it would tell us how much misconduct is going on behind jury-room doors. Most importantly, it would let us gauge whether the presence of cameras has a negative effect on juror candor. Depending on the answers to those questions, the experiment could either be cut off entirely or expanded.

If researchers found that videos of jury deliberations could serve a number of useful purposes, federal and state lawmakers could go about amending rules to provide for limited uses for jury-room camera evidence. It’s not hard to picture an analog of Federal Rule of Evidence 606 containing a set of limited and carefully crafted exceptions to an otherwise blanket ban on jury-video evidence. As mentioned, those exceptions should be based on situations in which the footage would be most helpful. The obvious candidates have already been mentioned:

assessing harmless error and evaluating claims of irregularities in deliberations. We could also start slowly and cautiously in determining when to use jury-room footage, first analyzing it and then selecting uses in light of that experience. The video should also be given over to researchers for continuing evaluation. With time, many new potential uses would come to light, and with research in hand, we could debate those future uses in an informed manner.

## TIME TO GIVE IT A TRY

Whenever new technology might improve our justice system, it comes paired with the fear of unintended consequences. After all, the system we have seems to work just fine, and courts have traditionally moved slowly in improving their own processes. But when we do take technological steps forward, the results are often overwhelmingly positive. That's not to say that we can know for sure that filming jury deliberations would have a purely positive effect. That sort of prediction is as hard as blindly predicting what happens behind the jury-room door. But lack of certainty can't be an excuse to bury our heads in the sand. We must seek out and probe where new technology can make our jobs easier and lead to more just outcomes. With these thoughts in mind, it's time to give cameras in the jury room a try.


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[1] Ellen Gamerman, *"Serial" Podcast Catches Fire*, Wall St. J., Nov. 13, 2014, *available at* http://goo.gl/CyAEpj.

[2] Sarah Larson, *What "Serial" Really Taught Us*, The New Yorker, Dec. 18, 2014, *available at* http://goo.gl/Cqnrqf.

[3] *See Jones v. United States*, 527 U.S. 373, 404–05 (1999).

[4] *Vaise v. Delaval*, 1 T.R. 11, 99 Eng. Rep. 944 (K.B. 1785).

[5] Alison Markovitz, Note, *Jury Secrecy During Deliberations*, 110 Yale L.J. 1493, 1505 (2001).

[6] *See McDonald v. Pless*, 238 U.S. 264, 267–68 (1915).

[7] *See Tanner v. United States*, 483 U.S. 107, 120 (1987).

[8] *Id.* at 120–21.

[9] *See id.* at 120.

[10] *See Warger v. Shauers*, 135 S. Ct. 521, 528 (2014).

[11] *Estes v. Texas*, 381 U.S. 532, 585 (1965) (Warren, C.J., concurring).

[12] *Id.* at 595 (Harlan, J., concurring).

[13] *Chandler v. Florida*, 449 U.S. 560, 582–83 (1981).

[14] *See Iowa Expanded Media Coverage Handbook*, Iowa Freedom of Information Council, Rule 25.2(2), http://goo.gl/gO58qO.

[15] Nancy S. Marder, *The Conundrum of Cameras in the Courtroom*, 44 Ariz. St. L.J. 1489, 1569–70 (2011).

[16] Paul K. McMasters, *Openness, Order Must Coexist in Court*, First Amendment Ctr. (Jan. 31, 2000), http://goo.gl/r4X1mK.

[17] Robert Barnes, *Supreme Court Won't Allow Cameras for Health-Care Arguments, Will Release Audio*, Wash. Post, March 16, 2012, *available at* http://goo.gl/HLycXw.

[18] No. 13-56132, 2015 WL 412835, at *1 (9th Cir. Jan. 30, 2015).

[19] Sandra Day O'Connor, *Juries: They May Be Broke, But We Can Fix Them*, Fed. Lawyer, June 1997, at 21.

[20] *See* 2 Peter J. Henning & Sarah N. Welling, Federal Practice and Procedure § 389 (4th ed. 2014).

[21] *See* O'Connor, *supra* note 19, at 22.

[22] Petit juries today; grand juries maybe tomorrow.

[23] Diane E. Courselle, *Struggling With Deliberative Secrecy, Jury Independence, and Jury Reform*, 57 S.C. L. Rev. 203, 204, 229–30 (2005).

[24] Nancy S. Marder, *Deliberations and Disclosures: A Study of Post-Verdict Interviews of Jurors*, 82 Iowa L. Rev. 465, 538–39 (1997).

[25] It's not clear that the First Amendment would permit a ban on such communication. *Cf.* Complaint, *Grand Juror Doe v. McCulloch*, No. 4:15-cv-00006-RWS (E.D. Mo. Jan. 5, 2015) (seeking declaratory judgment that Missouri laws prohibiting disclosure of grand jury deliberations are unconstitutional as applied).

[26] *Deliberations and Disclosures*, *supra* note 24, at 538.

[27] *See, e.g.*, D. Graham Burnett, A Trial by Jury (2002); Michael Knox, The Private Diary of an O.J. Juror: Behind the Scenes of the Trial of the Century (1995).

[28] *See United States v. Symington*, 195 F.3d 1080, 1085 (9th Cir. 1999); Fed. R. Crim. P. 23(b)(3).

[29] *See Schneble v. Florida*, 405 U.S. 427, 432 (1972).

[30] *See United States v. Olsen*, 737 F.3d 625, 633 (9th Cir. 2013) (Kozinski, C.J., dissenting from denial of rehearing en banc).

[31] *See United States v. Beard*, 161 F.3d 1190, 1194 (9th Cir. 1998).

[32] *See Johnson v. Duckworth*, 650 F.2d 122, 124 (7th Cir. 1981) (internal quotation marks omitted).

[33] *See Burch v. Louisiana*, 441 U.S. 130, 138 (1979).

[34] *Clark v. United States*, 289 U.S. 1, 13 (1933).

[35] Alex Kozinski, *The Two Faces of Anonymity*, 43 Cap. U. L. Rev. (forthcoming Spring 2015).

[36] *See The Conundrum of Cameras in the Courtroom*, *supra* note 15, at 1548.

[37] Brian Palmer, *How Accurate Are Juries?* Slate (July 18, 2013), http://goo.gl/4YIDH2.