

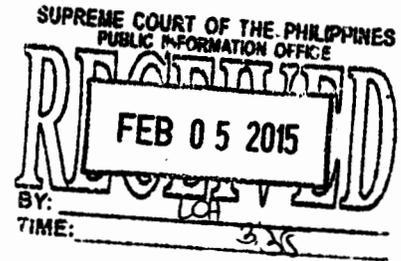


Republic of the Philippines
Supreme Court

Manila

EN BANC

NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated JANUARY 13, 2015, which reads as follows:

“A.M. No. 10-11-5-SC (Re: Petition for Radio and Television Coverage of the Multiple Murder Cases against Maguindanao Governor Zaldy Ampatuan, et al.); A.M. No. 10-11-6-SC (Re: Petition for the Constitution of the Present Court Handling the Trial of the Massacre of 57 Persons, Including 32 Journalists, in Ampatuan, Maguindanao into a Special Court Handling This Case Alone for the Purpose of Achieving Genuine Speedy Trial and for the Setting Up of Videocam and Monitor Just Outside the Court for the Journalists to Cover and for the People to Witness the ‘Trial of the Decade’ to Make It Truly Public and Impartial as Commanded by the Constitution); and A.M. No. 10-11-7-SC (Re: Letter of President Benigno S. Aquino III for the ‘Live Media Coverage of the Maguindanao Massacre Trial’).-

Before the Court for resolution are the following Motions for Reconsideration of the October 23, 2012 Resolution in these consolidated cases:

1. Motion for Reconsideration dated November 22, 2012 filed by the Office of the Solicitor General (OSG) for President Benigno S. Aquino III;
2. Motion for Reconsideration dated December 5, 2012 filed by petitioners National Union of Journalists of the Philippines (NUJP), *et al.*; and
3. Motion for Reconsideration dated December 6, 2012 filed by petitioners Editha Mirandilla-Tiamzon (Tiamzon) and Glenna Legarta (Legarta).

Previously, or on June 14, 2011, this Court promulgated a Resolution¹ (the June 14, 2011 Resolution) partially granting *pro hac vice* the request for live broadcast by television and radio of the trial court proceedings of the “Maguindanao massacre” cases,² subject to specific guidelines. Petitioners Tiamzon and Legarta filed a Partial Motion for Reconsideration of the June 14, 2011 Resolution on June 29, 2011, while accused Andal Ampatuan, Jr. (Ampatuan) filed his Motion for Reconsideration on June 27, 2011.

On October 23, 2012, this Court partially granted reconsideration of the June 14, 2011 Resolution and disallowed the live media broadcast of the trial of the Maguindanao massacre cases (the October 23, 2012 Resolution). This Court, however, still allowed the filming of the proceedings for real-time transmission to specified viewing areas, as well as the documentation of the trial, subject to the following guidelines on audio-visual recording and streaming of the video coverage:

a. An audio-visual recording of the Maguindanao massacre cases may be made both for documentary purposes and for transmittal to specified closed-circuit viewing areas: (i) outside the courtroom, within the Camp *Bagong Diwa*'s premises; and (ii) selected trial courts in Maguindanao, Koronadal, South Cotabato, and General Santos City where the relatives of the accused and the victims reside. Said trial courts shall be identified by the Office of the Court Administrator. These viewing areas shall be under the control of the trial court judges involved, subject to this Court's supervision.

b. The viewing area will be installed to accommodate the public who want to observe the proceedings within the Camp *Bagong Diwa* premises. The streaming of this video coverage within the different court premises in Mindanao will be installed so that the relatives of the parties and the interested public can watch the proceedings in real time.

c. A single fixed compact camera shall be installed inconspicuously inside the courtroom to provide a single wide-angle full-view of the *sala* of the trial court. No panning and zooming shall be allowed to avoid unduly highlighting or downplaying incidents in the proceedings. The camera and the necessary equipment shall be operated and controlled only by a duly designated official or employee of the Supreme Court.

d. The transmittal of the audio-visual recording from inside the courtroom to the closed-circuit viewing areas shall be

¹ *In Re: Petition for Radio and Television Coverage of the Multiple Murder Cases Against Maguindanao Governor Zaldy Ampatuan*, A.M. Nos. 10-11-5-SC, 10-11-6-SC and 10-11-7-SC, June 14, 2011, 652 SCRA 1.

² *People v. Datu Andal Ampatuan, Jr.*, Criminal Case Nos. Q-09-162148-72, Q-09-162216-31, Q-10-162652-66, and Q-10-163766, being heard by Presiding Judge Jocelyn Solis-Reyes of Branch 221 of the Regional Trial Court of Quezon City.

conducted in such a way that the least physical disturbance shall be ensured in keeping with the dignity and solemnity of the proceedings.

e. The Public Information Office and the Office of the Court Administrator shall coordinate and assist the trial courts involved on the physical set-up of the camera and equipment.

f. The original audio-recording shall be deposited in the National Museum and the Records Management and Archives Office for preservation and exhibition in accordance with law.

g. The audio-visual recording of the proceedings and its transmittal shall be made under the control of the trial court which may issue supplementary directives, as the exigency requires, subject to this Court's supervision.

h. In all cases, the witnesses should be excluded from watching the proceedings, whether inside the courtroom or in the designated viewing areas. The Presiding Judge shall issue the appropriate orders to insure compliance with this directive and for the imposition of appropriate sanctions for its violation.

The Office of the Solicitor General filed a Motion for Reconsideration dated November 22, 2012, for President Benigno S. Aquino III, alleging that "the trial of the deplorable, heinous and inhuman Maguindanao Massacre – a crime that is an illustration of the culture of impunity prevalent in the country – is imbued with public interest; thus, the need for its live radio and television coverage to ensure transparency and maintain integrity in the administration of justice" which would not prejudice the rights of the accused. The OSG maintained that the prosecution of the Maguindanao massacre is a matter of transcendental public concern which stirred public outcry and attracted wide international attention. According to the OSG, "[i]t is through public showing of the trial that transparency in the administration of justice is achieved." Moreover, the OSG contended that "whatever apprehension there may be on a full media coverage resulting in 'trial by publicity' remains purely conjectural and speculative."

In the Resolution dated December 4, 2012, this Court required the adverse parties to comment on the motion for reconsideration filed by President Aquino.

Petitioners NUJP, *et al.* also filed a Motion for Reconsideration dated December 5, 2012, citing the following as grounds for reconsideration: 1) compelling circumstances militate against blind adherence to *stare decisis*; 2) the balancing-of-interests test applied in the resolution runs *contra* to the Court's established rulings on freedom of speech, and in truth, the rights of the accused and those of a free press, to information and to a public trial are not repugnant to each other; 3) there are no factual bases to sustain the

conclusion that live televised coverage will unduly influence judges and witnesses; and 4) regulation is to be preferred over outright prohibition; neither should prohibition in the guise of regulation be preferred. NUJP, *et al.* also prayed that this Court reconsider its earlier Resolution and convene the special committee to formulate the appropriate guidelines for live coverage of the Maguindanao massacre trial.

In the Resolution dated December 11, 2012, this Court required the adverse parties to comment on the motion for reconsideration filed by NUJP.

Counsels for petitioners Tiamzon and Legarta also filed a Motion for Reconsideration of this Honorable Court's October 23, 2012 Resolution dated December 6, 2012, alleging that the banning of the live coverage of the Maguindanao massacre trials bucks the international trend towards judicial transparency and openness in matters that pertain to the public interest. Petitioners Tiamzon and Legarta also maintained that this Court's "refusal to allow live coverage of [the] trial seriously impairs the right of the public – and not just of the families of the massacre victims – to be informed of what ought to be the litmus test of the Philippine criminal justice system." The petitioners also prayed that this Court take due note and appropriate when applicable the models provided by the Supreme Court of the State of Michigan and the 20th Judicial Circuit of Florida in dealing with the live media coverage of court proceedings.

In the Resolution dated January 8, 2013, this Court required the adverse parties to comment on the motion for reconsideration filed by petitioners Tiamzon and Legarta.

Accused Andal Ampatuan, Jr., in his Comment dated February 21, 2013, stated that this Court had consistently taken the stand that "in balancing the competing rights of the public to know and of the right of the accused, the latter must prevail." Ampatuan further cited Article 14 of the International Covenant on Civil and Political Rights, which states:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of moral, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

In a Manifestation and Motion dated February 18, 2013, President Benigno S. Aquino III alleged that the issues and arguments involved in NUJP's Motion for Reconsideration dated December 5, 2012 were consistent with the issues and arguments succinctly discussed in his own Motion for Reconsideration dated November 22, 2012. President Aquino then prayed that his motion for reconsideration be reproduced by reference and considered as comment on NUJP's motion for reconsideration.

In a Comment dated April 11, 2013, accused Ampatuan stated that he was adopting his earlier Comment dated February 21, 2013 as his comment to the motion for reconsideration filed by petitioners Tiamzon and Legarta. Ampatuan further alleged that according to a report by the Subcommittee of the Legislative Committee of the Maryland Judicial Conference of Committee to Study Extended Media Coverage, not all states in the United States of America approve of courtroom media coverage. Those that were either experimenting or had already approved of broadcast even had further qualifications such as first obtaining the consent of the accused or other participants, disallowing coverage upon objection, and prior approval of the court.

After considering the arguments in the three Motions for Reconsideration before us, we see no reason to reverse our October 23, 2012 Resolution disallowing the live media broadcast of the trial in Criminal Case Nos. Q-09-162148-72, Q-09-162216-31, Q-10-162652-66, and Q-10-163766.

Petitioners Tiamzon and Legarta point us to certain models from the United States, but we are not persuaded because even in that jurisdiction, there are, to this day, conflicting rules and theories on the effect of cameras in courtroom proceedings. To study this, the federal Judiciary has an ongoing digital video pilot to evaluate the effect of cameras in courtrooms, and fourteen (14) federal trial courts are currently taking part in this project that has been extended to run until July 18, 2015.³ It is noteworthy that the guidelines for this pilot project provide that media or its representatives will not be permitted to create recordings of courtroom proceedings. The pilot is limited to civil proceedings in which the parties have consented to recording.⁴ Moreover, although allowed in certain cases by *district* courts, photographing in the courtroom, as well as broadcasting of judicial proceedings, is prohibited in criminal cases by Rule 53 of the *Federal Rules of Criminal Procedure*.⁵

³ United States Courts, Cameras in Courts
<<http://www.uscourts.gov/Multimedia/Cameras/OverviewofPilot.aspx>> (Last visited January 8, 2015).

⁴ Judicial Conference Committee on Court Administration and Case Management Guidelines for the Cameras Pilot Project in the District Courts,
<<http://www.uscourts.gov/uscourts/News/2011/docs/CamerasGuidelines.pdf>> (Last visited January 8, 2015).

⁵ Rule 53. Courtroom Photographing and Broadcasting Prohibited. Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during

The issue of whether to allow cameras in federal courtrooms is still raging. Opponents of cameras in federal courtrooms view the state court criminal trial of O.J. Simpson as a glaring example of a case in which the presence of cameras in the courtroom detracted from the dignity of the proceedings.⁶ In her article “The Conundrum of Cameras in the Courtroom,”⁷ Prof. Nancy S. Marder wrote “[e]ven though developments in technology have led to cameras that no longer require wires, cables, and camera crew members everywhere, the presence of a camera, no matter how unobtrusive, can still contribute to a circus-like atmosphere, as several high-profile cases in state courts have suggested.”⁸ Prof. Marder further wrote, “[th]e message of these cases is that when things go wrong with cameras in the courtroom, they go very wrong. The cases that serve as warnings are cases like the state criminal trial of O.J. Simpson for the murder of Nicole Brown Simpson and Ron Goldman in California, the dispute over the burial of Anna Nicole Smith in Florida, and the first state criminal trial of Lyle and Erik Menendez for the murder of their parents in California. In each of these cases, the camera was omnipresent and seemed to alter the behavior of judge and lawyers alike.”⁹

The judge needs to protect the rights of the parties and the dignity of the court as well as ensure the orderly conduct of the proceedings. In these high profile cases, this was not so easily achieved, and according to Prof. Marder, “[a]lthough there are no studies proving that cameras ‘caused’ these effects, the view of many in the legal community is that they did. And although these and a few other cases should be seen as outliers, the damage they did was far-reaching and disproportionate to their numbers.”¹⁰

Prof. Marder further wrote:

Opponents of cameras in federal courtrooms are concerned about the effects that cameras will have on the participants in the courtroom. In trial courts, they worry that witnesses’ behavior could be changed by the presence of cameras. Witnesses could become reluctant to testify. Witnesses could become concerned about their own safety if they are seen by television viewers. Opponents are also concerned that witnesses could be nervous about testifying before

judicial proceedings or the broadcasting of judicial proceedings from the courtroom. (*As amended Apr. 29, 2002, eff. Dec. 1, 2002*)
<http://www.uscourts.gov/Multimedia/Cameras/Rule53_Federal_Rules_Criminal_Procedure.aspx> (Last visited January 8, 2015).

⁶ See *People v. Simpson*, No. BA097211 (Cal. Super. Ct. L.A. County, October 3, 1995).

⁷ Nancy S. Marder, *The Conundrum of Cameras in the Courtroom*, 44 ARIZ. ST. L.J. 1489 (2012). The author of the book “The Jury Process,” Prof. Marder is also the Director of the Justice John Paul Stevens Jury Center and Co-Director of the Institute for Law and the Humanities of the Chicago-Kent College of Law, where she teaches Juries, Judges & Trials, a course on Legislation, and another on Law, Literature & Feminism.

⁸ Id. at 1517-1518.

⁹ Id. at 1550.

¹⁰ Id. at 1551.

the camera and that their nervousness could be misunderstood by jurors. x x x

x x x x

Opponents of cameras in federal courtrooms also worry about the camera's effects on lawyers and judges. They worry that lawyers will play more to the cameras than to the courtroom. Lawyers could become more dramatic, argumentative, or long-winded as they think about their image on television. Meanwhile, judges could become stricter or more lenient, more garrulous or taciturn, as they too think about television coverage.¹¹

x x x x

High-profile cases, such as the state criminal trial of O.J. Simpson for the murder of Nicole Brown Simpson and Ron Goldman, serve as warnings for some in the legal community about the ways in which judges' and lawyers' behavior can change when cameras are present in the courtroom. Even if the judge and lawyers were not aware of the camera at every moment of the O.J. Simpson criminal trial, they were sufficiently aware of the camera that their behavior became more exaggerated¹² x x x.

Opponents of cameras in federal courtrooms conceive of the camera as affecting behavior, rather than as a neutral, passive, all-seeing eye. As one federal judge observed: "[Cameras] affect peoples' performance and manner of behaving - and it's not always for the good." Another federal judge who participated in a pilot study that permitted cameras in some federal courtrooms on a limited basis found that "the camera is likely to do more than report the proceeding - it is likely to influence the substance of the proceeding."¹³

¹¹ Id. at 1514.

¹² Author's note: See, e.g., Abraham Abramovsky & Jonathan I. Edelstein, *Cameras in the Jury Room: An Unnecessary and Dangerous Precedent*, in *Criminal Courts for the 21st Century* 314, 320 (Lisa Stolzenberg & Stewart J. D'Allesio eds., 2d ed. 2002) ("For example, the courtroom participants' media awareness reached a disturbing apex in the recent murder trial of O.J. Simpson. During the Simpson trial, the public was treated to the spectacle of attorneys, witnesses, and even the trial judge playing to the cameras despite the extreme seriousness of the business at hand."); Litman, *supra* note 88, at 6 ("The O.J. Simpson trial confirmed what we already knew. Courtroom cameras affect the performance of all trial participants.").

¹³ Author's note: *Cameras in the Courtroom: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 86-87 (2005) (statement of Hon. Jan E. Dubois, J., United States District Court for the Eastern District of Pennsylvania). Cf. Verlyn Klinkenborg, *History and the Problem of Following the Camera's Gaze*, *N.Y. Times*, Nov. 28, 2007, at A26 (observing two photos of the audience gathered to hear Lincoln at Gettysburg and noting that several audience members appeared distracted and offering an explanation for their distraction: "Perhaps, too, it's the way that humans, for all their ability to concentrate, will nearly always behave, if given the chance, like the animals we are - easily distracted, diverted by a sudden motion, drawn off guard by the glint of light on a camera lens.").

Although cameras are unobtrusive and no longer require the lights, wires, and crew that they once did, their presence can still create a media spectacle that could undermine a criminal defendant's right to a fair trial. The images from the courtroom that become ubiquitous on cable television and the Internet twenty-four hours a day can create a new form of media spectacle. State court judges who handle high-profile jury trials are acutely aware of this problem. Their priority is a fair trial, even if the media does not see it that way.¹⁴

Prof. Marder suggests moving *incrementally* in a more open direction, and writes, "Cameras may eventually become commonplace in federal courtrooms, but it seems wise to proceed with caution before making such a policy change. The decision to conduct a three-year pilot program to study cameras in federal courtrooms is an important step and suggests waiting until the results are known."¹⁵ She further writes:

Judges need to recognize that neither television nor Internet images are neutral or objective. What viewers see is shaped by the way cameramen or individuals frame, light, and focus on the subject and the way that producers - professionals or amateurs - put together the story. The traditional view of cameras is as the all-seeing eye: they are turned on and they simply record what is before them. What is missing from this account is that the placement of the camera, the focus on a particular subject to the exclusion of all others, the editing of the images, and the voice-over that accompanies the images, give shape to the story. Because images are powerful and the story is woven seamlessly, it is easy to lose sight of what has been omitted and what choices have been made in the process.¹⁶

The OSG alleges that it is through a public showing of the trial that transparency in the administration of justice is achieved. Prof. Marder points out in her article that the notion of "public" may have taken on a new meaning in light of developments in technology.¹⁷ The "Maguindanao massacre" trial is already open to the public in several different ways, as outlined in the dispositive portion of our October 23, 2012 resolution and discussed above. Prof. Marder recognizes that it is important that the work of courts remains accessible to the public, but raises another reason to proceed slowly, and that is, once cameras enter federal courtrooms, they will be difficult to remove, and if it proves to be a mistake, the damage will be difficult, if not impossible, to undo. This Court agrees with the OSG about the transcendental importance of this trial, but cannot afford to open the door for even one detrimental mistake that could undermine the dignity and efficacy of the proceedings, or in any way affect the impartial administration of justice.

¹⁴ Supra note 7 at 1513-1516 and 1540.

¹⁵ Id. at 1562.

¹⁶ Id. at 1565-1566.

¹⁷ Id. at 1566.

Petitioners NUJP, *et al.* allege that this Court continues to ignore *Chandler v. Florida*¹⁸ and the “many authorities cited in the petition pertinent to constitutional rights, history and current events, which persuasively establish that prohibiting television cameras inside courtrooms finds no home in the open and transparent atmosphere of the 21st century.” In *Chandler v. Florida*, the United States Supreme Court found that new advances in technology and changes in the public perception of television gave reason to no longer presume prejudice from the mere broadcasting of a trial, thus leaving open the possibility for increased television broadcasting of criminal trials.¹⁹ But as mentioned before, this has led to some problems. As put forth by one United States criminal defense attorney in an article published in the New York Law School Law Review, “[t]he *Simpson* case had a great effect on the legal community and the public as a whole. It has forced many to reconsider the wisdom of allowing cameras in the courtroom.”²⁰ Even former President Bill Clinton joined the ranks of critics after the O.J. Simpson trial, saying that television coverage of the trial created a “circus atmosphere.”²¹

Summarizing the lessons learned from the O.J. Simpson trial, Judge Sharen Wilson and Judge Cynthia Stevens Kent in their article “Handling Capital Cases Dealing with the Media,” published in the *Texas Wesleyan Law Review*, wrote:

Perhaps all that needs to be said on the issue of media and trials is *People v. O.J. Simpson*. The lessons of that trial are obvious. The trial judge is directly and personally responsible for maintaining the dignity and decorum of the courtroom proceedings. The media’s interests do not involve issues of fair trial and due process. Rather, the media’s interests involve issues of public information, ratings, and financial benefits from coverage of a particular trial. Further, when dealing with media coverage, the attorney should determine how media coverage might affect the resolution of the client’s case and how he or she can appropriately deal with a capital case so as to protect the client and the integrity of our system of justice. Also, the trial judge must be aggressively involved in media management to ensure the defendant’s Constitutional right to a fair trial and the societal right to justice in a properly conducted trial.

X X X X

Although the United States Supreme Court maintains its prohibition of any broadcasting from its proceedings, in *Chandler v.*

¹⁸ 449 U.S. 560, 583 (1981).

¹⁹ John C. Meringolo, *The Media, the Jury, and the High-Profile Defendant: A Defense Perspective on the Media Circus*, 55 N.Y.L. SCH. L. REV. 981, 990 (2010/2011).

²⁰ *Id.* at 993.

²¹ Audrey Maness, *Does the First Amendment’s “Right of Access” Require Court Proceedings to be Televised? A Constitutional and Practical Discussion*, 34 PEPP. L. REV. 123, 163 (2007).

Florida the court unanimously held that permitting radio, television, and photographic coverage of criminal proceedings over the defendant's objections was constitutional absent a showing of abuse or actual prejudice. x x x.

x x x x

Thus, clearly the press does not have a First Amendment right of access to broadcast court proceedings. This decision has been challenged repeatedly but the Court has consistently held that the First Amendment protection of a free press does not require unlimited access to televise from the courtroom.

x x x x

Thus, the Chandler court not only held that broadcast coverage was not presumptively unconstitutional or inherently prejudicial; it also reiterated the holding that a media organization does not have a First Amendment right to broadcast court proceedings. Further, the court held that a defendant does not have a Sixth Amendment right to a publicly broadcasted trial. Rather, **the Court decided that the trial court had the discretion as to whether or not to allow in-court broadcasting after balancing the procedure for such broadcasting and the fundamental right to a fair trial.**²² (Emphasis supplied.)

Professor Kyu Ho Youm, who specializes in U.S. and international media law, wrote:

D. Cameras Still Banned from Federal Courts

x x x x

In 2011, the Judicial Conference authorized another three-year experiment with cameras in the courtroom similar to the one of the 1990s conducted by the Conference. The latest experiment of the federal courts is an exception to a local camera ban on federal courts. It is designed to address the request from Congress and some federal judges who positively view broadcast of court proceedings. The experiment is still limited in that it is only confined to civil trials and requires the approval of the presiding judge and the consent of all parties. In addition, the pilot program will not involve the news media organizations' "independent" cameras. Rather, court personnel will make the recordings, and it is up to the judge's discretion to make the recordings available to the public and the press. Moreover, the judge can switch off the recording "at any time."

²² Judge Sharen Wilson and Judge Cynthia Stevens Kent, *Handling Capital Cases Dealing With The Media*, 16 TEX. WESLEYAN L. REV. 159, 159-163 (2010).

The Supreme Court demonstrated indirectly but unmistakably that it has no inclination to broadcast its own proceedings. In early 2010, the Court by a 5-4 vote barred a federal district court from broadcasting a trial in San Francisco that concerned Proposition 8, an amendment to the Constitution of California that outlawed same-sex marriage in California. In *Hollingsworth v. Perry*, the Court held that “without expressing any view on whether such trials should be broadcast,” the broadcast should be prohibited on the ground that the trial court failed to follow the appropriate judicial procedures under federal law relating to such broadcasting. The Court, citing *Estes* [*Estes v. Texas*], was concerned about the impact of broadcasting on witnesses. “Witness testimony may be chilled if broadcast,” the majority wrote. “It is difficult to demonstrate or analyze whether a witness would have testified differently if his or her testimony had not been broadcast. And witnesses subject to harassment as a result of broadcast of their testimony might be less likely to cooperate in any future proceedings.”²³

The critics of broadcasted proceedings in the United States validly raise a lot of concerns, including “the potential for intimidation of jurors and witnesses, the possibility of a biased jury, grandstanding by the judge and/or the participating attorneys, and lastly, the threat to general courtroom decorum and the likelihood of chilled advocacy and judicial questioning.”²⁴ The critics have this in their favor: the Sixth Amendment guarantee of a fair and *public* trial has been interpreted to be the defendant’s right alone, not to be shared by the public.²⁵

To summarize and highlight the above considerations, we quote below a portion of the Comment, “Does the First Amendment’s ‘Right of Access’ Require Court Proceedings to be Televised? A Constitutional and Practical Discussion,” by Audrey Maness, published in the *Pepperdine Law Review*:

b. Practical Considerations

The crux of the critic’s practical argument is that adding a camera to a trial “significantly alters the judicial process in ways which pad and pen never did.” Many of the critics maintain that the past decade of widespread camera usage lends support to their argument, providing ample examples of what can - and does - go wrong. Furthermore, many critics argue that the use of cameras infuses courtrooms with politics, making “trials more political and less judicial.” Finally, critics readily note that the potential adverse effects of cameras extend beyond the courtroom, infringing upon trial participants’ privacy and safety, wrongfully encouraging civil litigants to settle, and

²³ Kyu Ho Youm, *Cameras in the Courtroom in the Twenty-First Century: The U.S. Supreme Court Learning From Abroad?*, 2012 B.Y.U.L. REV. 1989, 2003-2004. The author is the Jonathan Marshall First Amendment Chair, School of Journalism and Communication, University of Oregon.

²⁴ *Supra* note 21 at 126.

²⁵ *Id.* at 164. *See Patton v. United States*, 281 U.S. 276, 296-97 (1930).

causing a general public misperception of the court system and a given trial.

X X X X

Furthermore, even if judges were forced to value the educational effect of broadcasted proceedings, they should do so with caution, as the education provided from a televised proceeding is an incomplete and imperfect one. **Critics note that the trials that which are likely to be broadcast are atypical high-profile cases, and even those are often edited or summarized with two-minute “wrap-ups” at the end of the day.²⁶ This provides the public with a distorted view of both trials in general and of the specific trial under the spotlight.**

Of even greater importance in the critics’ argument is the potential adverse effect media coverage of a trial can have on trial participants. As mentioned above, proponents contend that the judicial procedures in place provide adequate safeguards against prejudice to the defendant. However, critics claim that such safeguards merely act as “legal Band-Aids,” minimizing prejudicial decision-making to some extent, but failing to “ameliorate media’s potential disruptive influences on the trial itself.” Consider how media coverage affects the star of the show, the defendant. Many critics suggest that media coverage portrays the defendant in an inaccurate, unflattering, and incriminating light, which follows the defendant into his personal life even after an acquittal is handed down. Furthermore, regardless of whether the defendant is ultimately found innocent or guilty, the camera’s incriminating eye affects the public, which in turn affects jurors, as many do not want to return an unfavorable verdict and then face criticism from their community. x x x.

The concerns as applied to witnesses are similarly substantial, but on different grounds. Whereas the defendant is often an involuntary trial participant, witnesses are regularly voluntary, and participation is fueled by a need to see justice done. However, some argue that witnesses are less inclined to participate in trial proceedings when cameras are present, either because they do not wish to be thrust into the public eye or because they are simply intimidated by the presence of cameras in the courtroom. This could potentially harm a defendant’s case. Even those witnesses who voluntarily participate may give altered testimony, either because they have listened to other testimony on television against a judge’s orders, or merely because the idea of their words being broadcast to an audience of thousands is frightening and unnerving. Broadcasted witness testimony even follows the witness after the trial has ended - Pablo Fenjves of the notorious O.J. Simpson murder trial noted that

²⁶ Author’s note: Melissa A. Corbett, comment, *Lights, Camera, Trial: Pursuit of Justice or the Emmy?*, 27 SETON HALL L. REV. 1542, 1563-64 (1997).

he had strangers approach him in the supermarket and he had even received death threats. **This raises another substantial concern: the safety and privacy of trial participants. Though most trial participants realize' that some level of privacy is readily sacrificed when one is involved in a public trial, this sacrifice becomes exponentially greater when cameras provide exposure to the national, rather than just local, community.**

These arguments are further supported by studies evaluating the effect of cameras in the courtroom. Even though some critics admit that the available studies are generally in the proponent's favor, others have found differently. For example, consider once again the Federal Pilot Program of the early 1990s. While many proponents have cited the evaluation favorably, others have focused on the specific results, noting the following "disturbing" statistics: 64% of the participating judges stated that cameras made witnesses more anxious, 46% thought "cameras made witnesses less willing to appear in court," and 41% found that cameras distracted witnesses. These statistics were supplemented by serious concerns from trial attorneys, who stressed that cameras may prevent witnesses and parties from testifying on sensitive matters, and that damaging accusations made at trial might persist after the trial, even if the defendant were vindicated. At least one defense attorney stated that "the threat of a televised trial would [encourage] the defendant to consider settlement regardless of the [strength] of the case [on the merits]. Critics citing these results understandably conclude that the "disadvantages of cameras in the courtroom far outweigh the advantages.

X X X X

Finally, many critics argue that televised reporting will necessarily be biased, as networks will rarely be able to cover a trial in its entirety. Even with a network solely committed to uninterrupted coverage (much like C-SPAN for the national legislature), it would be difficult to cover all trials in full, and even if the possibility existed, snippets of proceedings would likely be borrowed by other multi-purpose networks. Such selective cuts could misconstrue statements of the participants, possibly resulting in prejudice during trial or a distorted view of the attorneys, witnesses, or judges that would persist even after the trial ended. These arguments present no easy task for proponents; they set forth serious concerns that should be heeded by the judicial community. x x x.²⁷ (Emphases supplied.)

Considering the above discussion on the practical aspects of broadcasted criminal trial proceedings, this Court is therefore not persuaded by the OSG's claim that "whatever apprehension there may be on a full

²⁷

Supra note 21 at 164-168.

media coverage resulting in ‘trial by publicity’ remains purely conjectural and speculative.”

As for other foreign jurisdictions, despite what petitioners NUJP, *et al.* describe as the “open and transparent atmosphere of the 21st century,” most countries still do not allow cameras in their courtrooms.²⁸

The Constitution states that “[t]he Supreme Court shall have administrative supervision over all courts and the personnel thereof.”²⁹ In resolving the issues raised by the parties in this case, this Court was mindful that it was dispensing this constitutionally-enshrined duty, which it never takes lightly, and has thus decided accordingly.

WHEREFORE, the Motion for Reconsideration dated November 22, 2012 filed by the Office of the Solicitor General for President Benigno S. Aquino III; the Motion for Reconsideration dated December 5, 2012 filed by petitioners National Union of Journalists of the Philippines (NUJP), *et al.*; and the Motion for Reconsideration dated December 6, 2012 filed by petitioners Editha Mirandilla-Tiamzon and Glenna Legarta, all of our October 23, 2012 Resolution, are hereby **DENIED.** Brion, J., on leave. Jardeleza, J., no part. (12)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court 

²⁸ Supra note 23 at 2004.

²⁹ 1987 CONSTITUTION, Article VIII, Section 6.

ATTYS. MICHAEL J. MELLA, RONALDO E. RENTA
AND CIRILO P. SABARRE (reg)
Counsel for Petitioners
Rm. 305 National Press Club Building
Magallanes Drive, Intramuros, Manila

SECRETARY LEILA M. DE LIMA (x)
Department of Justice
Manila

HIS EXCELLENCY PRESIDENT BENIGNO S.
AQUINO III (reg)
Malacañang Palace San Miguel, Manila

THE SOLICITOR GENERAL (reg)
ASG ROMAN G. DEL ROSARIO (reg)
ASSOCIATE SOLICITOR JUDY A. LARDIZABAL (reg)
Office of the Solicitor General
134 Amorsolo St., Legaspi Village
1229 Makati City

ATTYS. ROMEO T. CAPULONG, RACHEL F.
PASTORES, FRANCIS ANTHONY PRINCIPE, MARY
KATHRYN G. SISON, ROLANDO RICO C. OLALIA,
AMYLYN B. SATO, JOSE CHRISTOPHER Y.
BELMONTE, PHILIP D. SAWALI AND
ROM-VOLTAIRE C. QUIZON (reg)
Counsel for Petitioners in A.M. No. 10-11-5-SC
4/F Kaija Bldg., 7836 Makati Ave. cor.
Valdez St., Makati City

ROQUE AND BUTUYANLAW OFFICES (reg)
Counsel for Editha M. Tiamzon & Glenna Legarta
1904 Antel 2000 Corporate Center
121 Valero St., 1200 Salcedo Village, Makati City

DIRECTOR JEREMY BARNES (reg)
National Museum of the Philippines
Padre Burgos Drive, City of Manila

THE EXECUTIVE DIRECTOR (reg)
National Archives of the Philippines [formerly Records
Management and Archives Office]
NPL Building, T.M. Kalaw St., Ermita, Manila

INTEGRATED BAR OF THE PHILLIPPINES, CEBU
CHAPTER (reg)
IBP Bldg., Capitol Compound
Cebu City, 6000

ATTY. ROMMEL REGALADO BAGARES (reg)
Counsel for Petitioners Tiamzon & Legarta
Roque & Butuyan Law Offices
1904 Antel 2000 Corporate Center
121 Valero St., Salcedo Village, 1200 Makati City

~~PUBLIC INFORMATION OFFICE (x)~~
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-1-SC]

Court Administrator
HON. JOSE MIDAS P. MARQUEZ (x)
Deputy Court Administrators
HON. RAUL B. VILLANUEVA (x)
HON. JENNY LIND R. ALDECOA-DELORINO (x)
HON. THELMA C. BAHIA (x)

Supreme Court

HON. JOCELYN A. SOLIS-REYES (reg)
Presiding Judge
Regional Trial Court, Branch 221
Quezon City

ATTYS. PHILIP SIGFRID A. FORTUN &
GREGORIO Y. NARVASA (reg)
Fortun Narvasa & Salazar Law Offices
Counsels for Accused Andal Ampatuan, Jr.
23rd Flr., Multinational Bancorporation
Centre No. 6805 Ayala Avenue, 1229 Makati City.

MR. JERRY YAP (reg)
President, National Press Club of the Philippines
Mr. Benny D. Antiporda (reg)
President, Alyansa ng Pilipinong Mamamayan
Rm. 305 National Press Club Building
Magallanes Drive, Intramuros, Manila

THE PRESIDING JUDGE (reg)
Regional Trial Court, Branch 78
Quezon City

THE EXECUTIVE JUDGE (reg)
Regional Trial Court
Cotabato City, Maguindanao

THE EXECUTIVE JUDGE (reg)
Regional Trial Court, Koronadal City
South Cotabato

THE EXECUTIVE JUDGE (reg)
Regional Trial Court, General Santos City
South Cotabato

THE REGIONAL DIRECTOR (reg)
National Capital Region Police Office
Camp Bagong Diwa, Bicutan, Taguig City

A.M. No. 10-11-5-SC, A.M. No. 10-11-6-SC and
A.M. No. 10-11-7-SC
wmd 11315 (12) 2215