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AN EMPIRICAL AND NORMATIVE ANALYSIS OF THE IMPACT OF TELEVISED COURTROOM PROCEEDINGS

Ralph E. Roberts, Jr.

I. INTRODUCTION

TELEVISED court proceedings have been the subject of numerous research efforts by constitutional scholars. The primary focus of constitutional scholarship has been on the tension between the First and Sixth Amendments of the United States Constitution. Usually, the argument proceeds as follows: the First Amendment's freedom of the press guarantee and the Sixth Amendment's declaration of a defendant's right to a fair trial are in conflict when the issue involves televising courtroom proceedings. Ultimately, most scholarly research concludes that the tension between the two amendments can be resolved in favor of permitting televised proceedings,¹ all other things being equal.² The argument then extends to say that because so many states allow televised court proceedings, there is no logical reason why televised proceedings should be prohibited in federal courts.³

There are two significant shortcomings in the research. First, there has been very little empirical analysis by the legal community to determine the real effects of televised court proceedings. Second, most of the empirical research that has been conducted focuses exclusively upon the actual participants in the trial: the judge, the jury, the attorneys, and the

1. By "televised proceedings," I mean any form of electronic media coverage, including television or radio broadcasts. Although the primary media examined in this Comment is television, I use media, television, and electronic media interchangeably, unless otherwise noted.

2. See Stephen A. Metz, *Justice Through the Eye of A Camera: Cameras in the Courtrooms in the United States, Canada, England, and Scotland*, 14 DICK. J. INT'L L. 673, 695-96 (1996); Susan E. Harding, *Cameras and the Need for Unrestricted Electronic Media Access to Federal Courtrooms*, 69 S. CAL. L. REV. 827, 845-46 (1996); Elizabeth M. Hodgkins, *Throwing Open a Window on the Nation's Courts by Lifting the Ban on Federal Courtroom Television*, 4 KAN. J.L. & PUB. POL'Y 89, 97-99 (1995). But see Jonathan M. Remshak, *Truth, Justice, and the Media: An Analysis of the Public Criminal Trial*, 6 SETON HALL CONST. L.J. 1083, 1115-16 (1996) (courts should enact measures ensuring that defendants are not denied fair trials because of prejudicial media coverage).

3. See Kathleen M. Krygier, *The Thirteenth Juror: Electronic Media's Struggle to Enter State and Federal Courtrooms*, 3 COMM'LAW CONSPECTUS 71, 83-84 (1995).

witnesses.⁴ There is little research that examines the impact of a televised trial on the public, or whether the public's perception of the efficacy of the judicial system should factor into the debate about cameras in the courtroom. It goes without saying that the purpose of a trial is to determine whether the defendant is either guilty in a criminal trial or liable in a civil trial. At the same time, mass public opinion toward the courts is an important aspect of the judicial system. Legitimacy of the courts is a research concern of political scientists, as is the influence of public opinion upon judges, especially those sitting on the United States Supreme Court.⁵

For better or worse, the recent criminal trial of O.J. Simpson has reopened the debate concerning the prudence of televising courtroom proceedings. A survey taken by the New York County Lawyers' Association found that ninety-one percent of New York state judges believed that the coverage of the Simpson trial damaged public perception of the judicial system.⁶ Nevertheless, the O.J. Simpson trial generated a wealth of polling data concerning public opinion of the criminal justice system. The extensive television coverage of the Simpson trial has allowed public opinion organizations to focus their research on the public's perception of televised trials.

This Comment examines some of the public opinion data regarding the impact of televised court proceedings upon the public. After an analysis of that data, the Comment examines the weight that the judicial community should give to such data and proposals for future research efforts.⁷ Although the constitutional basis for televised court proceedings is probably not in doubt, the Comment will also examine the constitutional models and theories used by federal and state systems to permit televised court proceedings.

This Comment is not about the Simpson trial per se. However, it is necessary to use data collected during the Simpson trial because national public opinion polls provide an unique opportunity to examine the effect

4. See, e.g., Metz, *supra* note 2, at 696-98 (discussing effect of televising trials on witnesses and jurors); Gregory K. McCall, *Cameras in the Criminal Courtroom: A Sixth Amendment Analysis*, 85 COLUM. L. REV. 1546, 1552-55 (1985) (describing effect on witnesses of televising trials).

5. See generally THOMAS R. MARSHALL, *PUBLIC OPINION AND THE SUPREME COURT* (1989).

6. See Deborah Lorber, *Cameras in Court After O.J.: The Debate Continues*, N.Y. L.J., Nov. 16, 1995, at 1.

7. See Peter D. O'Connell, *Pretrial Publicity, Change of Venue, Public Opinion Polls—A Theory of Procedural Justice*, 65 U. DET. L. REV. 169, 174 (1988) (most judges do not like to use public opinion polls in the determination of whether to change venue because of community prejudice or hostility). But see Michael G. Wagner, *Judge Gives Approval for Opinion Poll in Raabe Case: Earlier Ruling Reversed to Avoid Trial Delay*, L.A. TIMES, Jan. 30, 1997, at B1 (Orange County Superior Court judge agreed to use public opinion poll of county residents, at taxpayer expense, to determine if assistant county treasurer could receive a fair trial); James G. Wilson, *The Role of Public Opinion in Constitutional Interpretation*, 1993 BYU L. REV. 1037, 1134 (public opinion is, and should be, a factor in determining constitutional law).

of a televised trial on the public's perception of the judicial system. Additionally, polling evidence from other trials will be examined.

II. THE CONSTITUTIONAL BASIS FOR TELEVISED COURT PROCEEDINGS

*Estes v. Texas*⁸ begins the constitutional discourse of televised court proceedings, particularly focusing on the Fourteenth Amendment Due Process Clause. This case has been much discussed because the highly fragmented majority concluded that televising both pre-trial hearings and the actual trial of a criminal defendant over objection is a violation of the defendant's due process rights.⁹ Some scholars argue that the holding in *Estes* should not be interpreted as a broad rule against televised court proceedings, but instead should be limited to the facts of the case.¹⁰ Thus, if Professor Lassiter is correct, the *Estes* court limited the prohibition of cameras in the courtroom only where the trial is highly sensational, the media organizations have created a chaotic atmosphere, there is no media pooling arrangement, and the judge is arguably not in control of the trial.¹¹

The most important features of this decision are two foundational premises. The first is that the decorum of the courtroom is an important element in determining whether a defendant has received a fair trial.¹² The second is that, according to Justice Clark, it was the technology used by television stations that denied *Estes* a fair trial.¹³ As Justice Clark explained,

[t]he television and radio reporter has the same privilege. All are entitled to the same rights as the general public. The news reporter is not permitted to bring his typewriter or printing press. When the advances in these arts permit reporting by printing press or by television without their present hazards to a fair trial we will have another case.¹⁴

Justice Clark implied that when the technology changed to allow television cameras to be less obtrusive and permit the court to maintain a high degree of decorum, then the Supreme Court would have to reexamine the issue, and presumably *Estes* could be distinguished.

Both Justice Clark, writing for the court, and Chief Justice Warren, writing a concurring opinion,¹⁵ agree that it is a violation of the Sixth and Fourteenth Amendments to televise trials.¹⁶ Justice Clark refers to tele-

8. 381 U.S. 532 (1965).

9. *See id.*

10. *See* Christo Lassiter, *TV or Not TV—That is the Question*, 86 J. CRIM. L. & CRIMINOLOGY 928, 938 (1996).

11. *See id.* at 938-39.

12. *See Estes*, 381 U.S. at 536.

13. *See id.* at 544.

14. *Id.* at 540.

15. *See id.* at 552. Justices Douglas and Goldberg joined the Chief Justice's concurrence. *See id.*

16. *See id.* at 539, 565.

vised trials as an "indulgence,"¹⁷ and the concurrence describes television cameras in a trial as "irrelevant external factors."¹⁸ Thus, under *Estes*, one can argue that there is no presumptive First Amendment right to televise trials.

One of the arguments made by the state in *Estes* is that if the Court disallows a televised trial, there should at least be a specific showing of prejudice to the defendant.¹⁹ The Court quickly dismantled that argument by noting that even though the prejudice may not be facially apparent, the prejudice is intuitively apparent.²⁰ This explains why at the time so many states, along with the U.S. Judicial Conference, prohibited the use of cameras in the courtroom. The concurrence also noted that having television cameras in the courtroom, as the facts of *Estes* demonstrate, is "inconsistent with the conception of what a trial should be,"²¹ and thus violative of the defendant's due process guarantees.²² According to the *Estes* court, the psychological impact of cameras in the courtroom may be so pervasive on all of the participants, whether judge, jury, or attorney, that cameras should be excluded even though no specific finding of prejudice is available. Chief Justice Warren wrote,

the evil of televised trials, as demonstrated by this case, lies not in the noise and appearance of the cameras, but in the trial participants' awareness that they are being televised. To the extent that television has such an inevitable impact[,] it undercuts the reliability of the trial process.²³

The Supreme Court delivered its last major decision explicitly on the issue of cameras in the courtroom in 1981. In *Chandler v. Florida*,²⁴ the Court effectively reversed its earlier position in *Estes* and held that a state may authorize a televised criminal trial, even if the defendant objected to the coverage. Although the Court was careful to articulate that *Chandler* did not overturn *Estes*, *Chandler*, in fact, is inconsistent with *Estes* on almost every conceivable level.²⁵ The principal holding in *Estes* was that

17. *Id.* at 540.

18. *Id.* at 562.

19. *See id.* at 541.

20. *See id.* at 550.

21. *Id.* at 562.

22. Remember that *Estes* was decided in 1965, but the original trial was in 1962. The courtroom had "[c]ables and wires . . . snaked across the courtroom floor, three microphones were on the judge's bench and others were beamed at the jury box and the counsel table." *Id.* at 536.

23. *Id.* at 570 (Warren, C.J., concurring).

24. 449 U.S. 560 (1981).

25. Chief Justice Burger, writing for the majority in *Chandler*, went to great lengths to argue that the holding in *Estes* was found in Justice Harlan's concurring opinion. Justice Harlan's concurrence is "fundamental to an understanding of the ultimate holding of *Estes*." *Chandler*, 449 U.S. at 571. In arguing that *Estes* did not announce a per se rule prohibiting a televised criminal trial, Chief Justice Burger wrote that Justice Harlan contemplated that television may one day become such a pervasive presence in American society that televised trials may not negatively impact the judicial process. *See id.* at 573-74 n.8 (quoting *Estes*, 381 U.S. at 595). Apparently, the constitutionality of televised trials does not depend upon a reasoned constitutional inquiry, but rather upon the changing broadcast technology and invasiveness of television cameras into American life. *See id.* at

the defendant need not show actual prejudice in order to prohibit televising the trial. On the other hand, the *Chandler* Court held that instead of a presumption of harm, the defendant must demonstrate that the televised trial produced such a prejudicial effect that the trial was not conducted fairly.²⁶ The *Chandler* Court effectively turns the reasoning of the *Estes* court on its head: when there is some risk of juror prejudice because of the televising of the proceeding, the presumption shifts from the *Estes* analysis that the risk of prejudice is too great to allow a possible tainting of the trial, to the *Chandler* analysis that the risks that may occur are placed upon the defendant's shoulders.²⁷ The reason for this turnaround is that there has been no conclusive evidence that the presence of television cameras in the courtroom has any intrinsic negative effect on the judicial process.²⁸ Given that there was no compelling statistical evidence demonstrating that the presence of television cameras had a negative effect on the trial, the Court was unwilling to hold that the presence of cameras in the courtroom is a per se due process violation.²⁹

Further, the *Chandler* Court was unwilling to find a per se due process violation because the Court did not want to stifle creativity and experimentation in the states.³⁰ Although the Court does not specifically explain its reasoning, it expressed that experimentation, which is an essential element of a federal system, is a required element in its calculus.³¹

Both Justice Stewart and Justice White filed separate concurring opinions. Each stressed that the *Estes* decision announced a per se rule prohibiting the televising of a criminal proceeding and should be overturned to reach the result in *Chandler*.³² These concurrences are important in that both Justices dissented in *Estes* and, thus, provide some type of insight into the holding in *Estes*.³³

Justice Stewart argues that the holding in *Estes* did not depend upon the changes in broadcast technology that might one day make the cameras so unobtrusive as to make any due process violation disappear.³⁴

576. See also David L. Faigman, "Normative Constitutional Fact-Finding:" Exploring the Empirical Component of Constitutional Interpretation, 139 U. PA. L. REV. 541, 544-45 (1991) (arguing that the Supreme Court does not distinguish between normative and empirical propositions leading the Court to interpret facts instead of finding facts).

26. See *Chandler*, 449 U.S. at 575.

27. See *id.* See also SUSANNA BARBER, NEWS CAMERAS IN THE COURTROOM: A FREE PRESS-FAIR TRIAL DEBATE 51-52 (1987) (the reasoning in *Estes* and *Chandler* are in "sharp contrast").

28. See *Chandler*, 449 U.S. at 578-79.

29. See *id.* at 579.

30. See *id.* at 579-80.

31. See *id.*

32. See *id.* at 583 (Stewart, J., concurring); see *id.* at 587 (White, J., concurring).

33. See *Estes*, 381 U.S. at 601 (Stewart, J., dissenting); *Id.* at 615 (White, J., dissenting).

34. Although there have been significant advances in the technology found in television equipment, the more than 1000 members of the media at the Simpson trial used over fifty miles of cable to produce over 2000 hours of coverage of the trial. See S.L. Alexander, *The Impact of California v. Simpson on Cameras in the Courtroom*, 79 JUDICATURE 169 (1996).

Instead, the violation of due process in *Estes* was inherent in the presence of television cameras in the courtroom.³⁵ This interpretation seems to be less strained. When one considers that the due process violations cited by Justice Clark in *Estes* stem from the trial participants' knowledge that they were on television. It does not seem reasonable to conclude that a smaller television camera would result in less knowledge that the participant was on television. One can certainly debate the empirical evidence regarding the psychological impact of television cameras upon the trial participants. Nevertheless, it seems that as a matter of logical consistency, if participants know that they are being televised, then they know that they are being televised—no matter the size of the camera. Thus, the arguable psychological effects resulting from being in front of a camera, such as jurors being prejudiced to make the correct decision for fear of going back into the community³⁶ or embarrassment of witnesses, may prevent the ascertainment of the truth³⁷ or change the judge's focus from the administration of the trial to the administration of the television cameras.³⁸ These fears, which are not substantiated by the Court, should be present, if they are present at all, no matter the size of the camera.³⁹ Thus, it appears that Chief Justice Burger used the Harlan concurrence in *Estes* to avoid overruling *Estes* in *Chandler*.

After *Chandler*, there has been a myriad of cases involving the issue that is truly at the heart of the cameras in the courtroom debate: how does the First Amendment freedom of the press harmonize with the Sixth Amendment right to a fair and public trial? Specifically, is the Sixth Amendment public trial provision a guarantee for the defendant, or is it a guarantee for the public? In *Gannett Co. v. DePasquale*,⁴⁰ the Court held that the public does not have an independent right of access to view a pretrial proceeding.⁴¹ The public trial provision of the Sixth Amendment is a guarantee afforded to the defendant as a check on the state to ensure the fairness of the trial.⁴²

In 1980, the Supreme Court addressed the contention of the press that the First Amendment entitled members of the media access to a trial. In *Richmond Newspapers, Inc. v. Virginia*,⁴³ the plurality opinion held that

35. See *Chandler*, 449 U.S. at 584.

36. See *Estes*, 381 U.S. at 545.

37. See *id.* at 547.

38. See *id.* at 548.

39. The argument could be made that large cameras with a morass of wires, as used in *Estes*, allow the trial participants to have not only knowledge that they are being taped, but that they are being continuously monitored. A smaller camera may allow the participant to "forget" that she is being filmed. Unfortunately, this hypothesis is difficult to test. The results from the federal courts' survey, *infra* note 69, indicate that the federal judges remarked that they often forgot about the presence of cameras in their courtroom, and these judges surmised that the other trial participants were not distracted by the cameras. See *infra* notes 69-88 and accompanying text.

40. 443 U.S. 368 (1979).

41. See *id.* at 391.

42. See *id.* at 380-81.

43. 448 U.S. 555 (1980).

the First Amendment allows the press to be present in the courtroom during a trial.⁴⁴ Because there is a tradition of criminal trials being open to the public, the press has the same right as any other member of the public to attend a trial and report on that trial. This right, however, is one that may be limited by the trial judge.⁴⁵

Many advocates for cameras in the courtroom claim that denying access to the media precludes the public from observing the trial.⁴⁶ If the court excludes the press from a trial, the exclusion must be necessitated by a compelling government interest and narrowly tailored to serve that interest.⁴⁷ Although precluding the public from the trial is a significant violation, lack of opportunity for the public to become educated about the judicial process is an argument that naturally arises given the lack of public access. According to this argument, if cameras are removed from the courtroom, the inherent public interest to view trials is diminished.

This line of reasoning suffers in several ways. First, it presumes that every one who wants to see a trial can see a trial. There are numerous limitations on who can see a trial: the interested party may not be able to leave work to observe the trial, the courtroom may not have enough seats to accommodate all of the interested parties, or public policy may dictate that parts of the trial are closed to the public to protect the identities of testifying parties, such as sexually abused children or undercover police officers. Additionally, even though television is available and allows trials to be shown, how far should the justice system go to satisfy every interested viewer's appetite? How much damage is done if the trial that I want to watch is being conducted in another state and is not being televised? Is there any constitutional diminution in that scenario when, say, the O.J. Simpson civil trial is not being televised?

I argue not. Although some may argue that television coverage is the next best thing to being at the trial,⁴⁸ certainly no one could argue that televising the trial affects a spectator the same way being in the courtroom would. While watching a televised trial, spectators are in the comfort of their own home, and more importantly, have a restricted view of the courtroom. The television may focus upon the judge, the attorney who is speaking, or on the witness. The home viewer is denied from watching is the jurors' reaction to statements made by a witness or the arguments of the attorney. The home viewer is also denied the sensory impressions associated with the dignity and solemnity of the courtroom.⁴⁹

44. See *id.* at 581; see also *State v. Rogers*, 478 N.E.2d 984, 995 (Ohio 1985); *Houston Chronicle Publ'g Co. v. Shaver*, 630 S.W.2d 927, 933 (Tex. Crim. App. 1982).

45. See *Richmond Newspapers*, 448 U.S. at 581 n.18.

46. See *Harding*, *supra* note 2, at 829.

47. See *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982).

48. See *Harding*, *supra* note 2, at 829.

49. This is the same difference between watching a sporting event on television and being in the stadium. On one level, the home viewer has the advantages of instant replay and expert commentary on the game. On another level, however, the viewer at the game is able to experience the unquantifiable atmosphere of the game, which may be one reason that individuals are willing to pay money to attend televised sporting events. No economi-

One could question the difference between seeing O.J. Simpson attempting to try on the gloves that did not fit and reading about that incident, but is that difference so great as to require cameras in the courtroom? Even if, as the *Estes* court hypothesized, there are intangible factors inside a televised courtroom that may affect some or all of the participants in the courtroom in an unquantifiable way, is "the next best thing to being there" worth the risk of disrupting the defendant's trial?

III. THE STATE MODELS

According to the National Center for State Courts, forty-eight states allow cameras into the courtrooms,⁵⁰ with thirty-five of those states allowing cameras into the criminal courtroom.⁵¹ Many states require a showing of prejudice by the defendant to warrant the removal of cameras from the courtroom.⁵²

Two states, Mississippi and South Dakota, do not allow cameras in the courtroom,⁵³ and those states do not have any pending rules that would allow cameras in the courtroom.⁵⁴ Several states are modifying the use of cameras in the courts, either by proposing legislation that will further restrict the use of cameras or by expanding the use of cameras in the courts.⁵⁵ The California Judicial Council, for example, recently adopted Rule 980 of the California Rules that will allow judges to retain discretion over the use of cameras in their courts.⁵⁶ The new rule does place an

cally rational actor would prefer to battle with congested freeways, limited parking, and significant costs of tickets when the actor can stay at home and watch the game for little cost. Or, to put this in another perspective, this is the difference between watching Pavarotti in person or on PBS. The PBS telecast may be good, but it just is not the same as being there.

50. Indiana became the forty-eighth state to allow cameras in the courtroom when the Indiana Supreme Court recently announced that certain court sessions will be open to electronic media coverage on an experimental basis. See Bill Theobald, *Cameras Will Get a Shot in Court State Supreme Court; Only Will be Opened on Experimental Basis, the Chief Justice Says*, INDIANAPOLIS STAR, Sept. 1, 1996, at B01.

51. Information Service of the National Center for State Courts, Summary of TV Cameras in the State Courts (Jan. 1, 1996) (unpublished document available from the National Center for State Courts) [hereinafter Summary of State Courts]. The decision by the Indiana Supreme Court was not implemented at the time that the National Center for State Courts conducted its survey.

52. See, e.g., *State v. Cardenas*, 704 P.2d 834, 836 (Ariz. Ct. App. 1985); *Jim Halsey Co. v. Bonar*, 688 S.W.2d 275, 276 (Ark. 1985); *Jent v. State*, 408 So. 2d 1024, 1029 (Fla. 1981); *State v. Douglas*, 485 N.W.2d 619, 625 (Iowa 1992); *Stewart v. Commonwealth*, 427 S.E.2d 394, 402 (Va. 1993).

53. See S.D. CODIFIED LAWS § 23A-44-16 (Michie 1997) (television or radio broadcasting or photography of judicial proceedings are prohibited); *Associated Press v. Bost*, 656 So. 2d 113, 118 (Miss. 1995) (judicial canons did not violate the equal protection guarantees of the media); *Brantley v. State*, 610 So. 2d 1139, 1142-43 (Miss. 1992) (allowing the presence of a television camera at the trial of a defendant accused of robbery and rape is reversible error).

54. See Summary of State Courts, *supra* note 51.

55. See Lassiter, *supra* note 10, at 931 (noting that California and Georgia have examined or adopted measures to limit cameras, and Tennessee has become less restrictive).

56. *Revised Cameras Rule Reaffirms Judicial Discretion*, (visited Feb. 26, 1998) <<http://www.courtinfo.ca.gov/ctnews/06960796/newruls.htm>>.

additional restriction upon television coverage: jury selection, the jurors, and spectators in the courtroom are not allowed to be televised.⁵⁷ When considering whether to allow camera coverage, the trial judge's calculus should include weighing the privacy rights of trial participants, the importance of maintaining public access to the courts, and the effect of coverage on jury selection.⁵⁸

The Massachusetts Superior Court recently denied a motion to televise the trial of John C. Salvi, III.⁵⁹ Salvi was tried on charges of murder and armed assault with intent to murder for an attack on a Planned Parenthood and Preterm Clinic in Brookline, Massachusetts in 1994. Both the state of Massachusetts and Salvi moved to exclude the presence of television cameras during the trial. Under court rules, judges are required to permit televising a trial unless, in the judge's broad discretion, the coverage "will create a substantial/likelihood of harm to any person or other serious harmful consequences."⁶⁰ Here, the court held that the televising of the trial would create a serious threat to a fair trial because the publicity would increase the risk of prejudicial information that would be available to the jurors.⁶¹ Additionally, Salvi, according to the court, had a history of disruptive behavior during other court proceedings, and the presence of cameras would encourage Salvi to use the proceedings to air his views on abortion and other issues.⁶²

In weighing the possible harm to material witnesses,⁶³ jurors, and the trial process against the media interest in the abortion debate, the court concluded that the presence of cameras would dilute Salvi's fair trial rights.⁶⁴ Thus, in this case, the court concluded that rules favoring the televising of trials were outweighed by fair trial concerns. Particularly given the nature of the offense and the divisive nature of the abortion issue, one can understand why the court would want to reduce the amount of publicity generated by the trial. But the advocates of cameras in the courtroom would argue that this is just the type of trial that should be aired. If televising trials serves to educate the public on matters regarding judicial proceedings and public policy, the presumption should be to televise the most controversial trials, such as John Salvi's.⁶⁵ The court here made the correct legal analysis in weighing the importance of the defendant's fair trial rights more heavily than the electronic media's abil-

57. *See id.*

58. *See id.*

59. *See* Commonwealth v. Salvi, Crim. A. Nos. 99518 to 99524, 1996 WL 350842, at *1 (Mass. Dist. Ct. Jan. 25, 1996).

60. *Id.* (quoting Commonwealth v. Cross, 33 Mass. App. Ct. 761, 762 (1992)).

61. *See Salvi*, 1996 WL 350842, at *1-*2.

62. *See id.* at *2.

63. The court relied upon affidavits of witnesses, victims, and family members associated with the deaths, averring that the presence of cameras "heightened their fears of harassment and physical attack by 'misguided viewers.'" *Id.*

64. *See id.*

65. *See* Krygier, *supra* note 3, at 74 (noting that public trials provide significant therapeutic value for the community, allowing an outlet for concern) (quoting *Richmond Newspapers*, 448 U.S. at 570).

ity to televise the trial. It is also important to note that in this case the judge did not preclude still-camera photography from the courtroom, nor was the public excluded from the courtroom. Newspaper reporters and photographers were able to cover the trial, and interested members of the public could read those reports or view the still pictures. One must question, then, what constitutional right was violated by this order, and if there was a violation, how significant was it?

The Indiana Supreme Court announcement makes Indiana the forty-eighth state to allow cameras into the courtroom.⁶⁶ Only oral arguments before the Indiana Supreme Court will be aired, and there is little prospect that trials will be shown on television.⁶⁷

IV. THE FEDERAL EXPERIMENT

Even though the Federal Rules of Criminal Procedure prohibit electronic media coverage of criminal proceedings,⁶⁸ the U.S. Judicial Conference's Ad Hoc Committee on Cameras in the Courtroom recommended that the Judicial Conference eliminate Canon 3A(7)⁶⁹ and institute an experiment allowing cameras in certain federal courts. After the Judicial Conference approved this experiment, six district courts⁷⁰ and two courts of appeals⁷¹ volunteered to participate in the experiment.⁷² The findings of the study were generally favorable towards the presence of cameras in the federal courtrooms, although these findings have limited utility.

66. See *Brown v. State*, 546 N.E.2d 839, 842 (Ind. 1989) (defendant's motion to allow televising of his trial, if granted, would have violated the Indiana Code of Judicial Conduct).

67. Chief Justice Shepard noted that the "circus-like atmosphere" of several high profile trials, notably the Simpson trial, the William Kennedy Smith trial in Florida, and the Menendez brothers trial in California, created a deeper sense of caution in allowing the electronic media to televise trials. See Theobald, *supra* note 50, at B01.

68. See FED. R. CRIM. P. 53.

69. CODE OF CONDUCT FOR UNITED STATES JUDGES Canon 3A(7) (prohibiting the electronic media from filming or broadcasting in federal courtrooms). See MOLLY TREADWAY JOHNSON & CAROL KRAFKA, FEDERAL JUDICIAL CENTER, ELECTRONIC MEDIA COVERAGE OF FEDERAL CIVIL PROCEEDINGS: AN EVALUATION OF THE PILOT PROGRAM IN SIX DISTRICT COURTS AND TWO COURTS OF APPEALS 4 (1994), <<http://www.fjc.gov/cortadmin/elecmediacov/elecmediacov.html>> [hereinafter FEDERAL REPORT].

70. These courts were the Southern District of Indiana, the District of Massachusetts, the Eastern District of Michigan, the Southern District of New York, the Eastern District of Pennsylvania, and the Western District of Washington. See FEDERAL REPORT, *supra* note 69, at 4.

71. These courts were the U.S. Court of Appeals for the Second and Ninth Circuits. See *id.*

72. Note that the courts participating in this program did so on a voluntary basis. This means, and the FEDERAL REPORT acknowledges, that the results of the study should be viewed skeptically. See *id.* at 8. As the FEDERAL REPORT notes:

the pilot courts were chosen from among courts that had volunteered to participate, and most of the analyses in our study focused on judges who actually had experience with electronic media coverage. Thus, it could be expected that judges whose responses we report would on average be more favorable toward electronic media coverage than would a randomly-selected sample of judges throughout the country.

Id.

The Federal Judicial Center found that the district judges who had some type of experience with cameras in the courtroom believed that the cameras had a minor effect on the trial and the trial participants.⁷³ Further, the *Federal Report* concludes that changes in the judge's attitudes toward cameras in the courtroom were caused by the judges' initial feelings toward cameras, and not by a "general shift in judges' attitudes toward the media."⁷⁴ Most of the judges with electronic media experience felt that the greatest potential benefit of electronic coverage is the educational value it provides to the public, although this benefit was realized only moderately under the experimental program.⁷⁵ Responding to one of the specific concerns expressed by the *Estes* court, the judges in the experimental program noted that ruling on objections to electronic media coverage took very little time.⁷⁶ The judges were also nearly unanimous that the presence of cameras did not create a lack of courtroom decorum, nor did the presence of cameras have a negative effect on the attorneys.⁷⁷

Attorneys surveyed by the Federal Judicial Center were also favorable towards cameras in the courtroom, with sixty-six percent saying that they favored electronic media coverage, twenty-one percent opposing coverage, and thirteen percent having no opinion.⁷⁸ Like the judges, counsel's opinion toward cameras did not change with exposure to cameras. Sixty-eight percent of the counsel surveyed said that their attitude toward televised proceedings did not change with exposure; twenty-eight percent said they were more favorable toward televised proceedings; and four percent said they were less favorable after their experiences.⁷⁹

The *Federal Report* also studied the use of the television footage in broadcast news reports.⁸⁰ Almost two-thirds (sixty-three percent) of the footage was narrated by a television reporter, with just under one-third of the footage shown having a trial participant speak.⁸¹ Of the broadcast time that showed participants, plaintiffs received approximately forty-two percent of the air-time, and defendants received approximately twenty-seven percent of the air time.⁸² When the Federal Judicial Center examined how much coverage was given to information that could educate the public about the judicial process, the researchers found that "the stories did not provide a high level of detail about the legal process in the cases covered. In addition, the analysis revealed that increasing the proportion of courtroom footage used in a story did not significantly increase

73. *See id.* at 12.

74. *Id.* at 13.

75. *See id.* at 24.

76. *See id.*

77. *See id.* at 25.

78. *See id.* at 19.

79. *See id.* at 18-19.

80. The Federal Judicial Center studied ninety stories with total footage of one hour and twenty-five minutes. The average story showed fifty-six seconds of courtroom footage. *See id.* at 34.

81. *See id.*

82. *See id.*

the information given about the legal process.”⁸³

The *Federal Report* concludes by recommending that the Judicial Conference should allow the use of cameras in federal courtrooms so long as the use of cameras comport with certain guidelines.⁸⁴ The Judicial Conference in 1994 declined to extend the experiment because of fears of the “intimidating effects cameras may have on some witnesses and jurors,” and the Conference approved a resolution in March of 1996 that allows courts of appeal to decide on their own whether to allow the use of electronic media to cover appellate arguments.⁸⁵ The Conference also voted to request that the circuit judicial councils adopt an order that would prohibit the use of electronic media in the U.S. district courts.⁸⁶

It appears from the *Federal Report* and the subsequent reaction to the report that the tension between *Estes* and *Chandler* is still alive and quite well. The judges on the Judicial Conference apparently took the majority’s approach in *Estes*. That is, there is some type of intangible effect that the camera has on participants in the courtroom and because that cause can be removed, it should be removed. The *Federal Report* counters by noting that a majority of judges and attorneys in the study did not discover any significant prejudicial effects, and to the extent prejudicial effects are not observed, cameras should be allowed in the courtroom. Because there is a paucity of evidence that conclusively demonstrates the effects of cameras on the trial participants, or on the mass public, it is difficult to determine in which direction the judicial system should err. Should the system err on the side of the press, allowing the press to televise proceedings in the absence of a prejudicial effect? Or should the system err on the side of the judicial system, presuming that there is some prejudice that is not discernible, and prohibit television coverage of the proceedings? Although the data in this Comment is by no means complete or sophisticated,⁸⁷ it is a first step in analyzing the impact of televised court proceedings on public opinion. And, later, there will be a discussion about the relevance of the mass public’s attitudes on the determination of whether to allow cameras into the courtroom.⁸⁸

Recently, the U.S. District Court for the Southern District of New York ruled that Court TV would be allowed to televise pre-trial arguments in that federal court.⁸⁹ In *Marisol A. v. Giuliani*,⁹⁰ clients of the

83. *Id.* at 36.

84. *See id.* at 43-49.

85. *See Judicial Conference Acts on Cameras in the Courts, The Third Branch* (1996), <<http://www.uscourts.gov/ttb/apr96/judconf.htm>>.

86. *See id.*

87. A significant amount of the data presented in this paper comes from different media sources that ask different, although similar, questions. There is no representation made in this paper that similar items are compatible. For a discussion of the problems with item comparability, see K. Jill Kiecolt & Laura E. Nathan, *Secondary Analysis of Survey Data*, in SAGE UNIVERSITY PAPER SERIES ON QUANTITATIVE APPLICATIONS IN THE SOCIAL SCIENCES 56-59 (1985).

88. *See infra* notes 137-168 and accompanying text.

89. *See Marisol A. v. Giuliani*, 929 F. Supp. 660, 661 (S.D.N.Y. 1996).

90. *Id.* at 662.

New York City Child Welfare Administration (CWA) filed a class action. The complaint alleged that the CWA violated or was likely to violate its constitutional and statutory duties of maintaining legal custody and legal responsibility for the city's foster children.⁹¹ The relief sought was to remove the CWA from the authorities legally responsible for supervising the agency and then placing the agency into receivership.⁹² Court TV would be allowed to televise the pre-trial arguments concerning class certification and the defendant's motion to dismiss.⁹³ General Rule 7 of the Local Rules of the court allow, at the court's discretion, an individual to bring a camera into the courtroom.⁹⁴ Although the Judicial Conference recommended that cameras not be allowed in the federal courtrooms, the district court in *Marisol* found that the recommendation is persuasive—not mandatory authority—and that the local rules govern the judges' decision.⁹⁵

In weighing whether to permit Court TV to televise the legal proceedings, the court determined that because there would be no jury or witnesses present, they could not be prejudiced by television coverage.⁹⁶ Moreover, the court refused to give weight to the city's argument that the proceeding is of such a technical nature that the public would not be able to understand what was being televised.⁹⁷ Another factor weighing in Court TV's favor is that the coverage would be "gavel-to-gavel" in that the entire argument will be televised; mere portions will not be used as sound bites for the evening news.⁹⁸ If this ruling is not overturned, it signals a significant shift in the federal courts that a local rule has priority over recommendations of the Judicial Conference, thereby allowing trial judges to permit cameras into their courtroom.

Following *Marisol*, the court in *Katzman v. Victoria's Secret Catalogue*⁹⁹ held that there is a presumptive First Amendment right to televise trials and of the public to view proceeding on television. In *Katzman*, Denise Katzman filed a class action suit against Victoria's Secret Catalogue, alleging that Victoria's Secret discriminated against women in its pricing structure in its mailed catalogues. Court TV applied to televise pretrial arguments concerning Victoria's Secret's motions to dismiss Katzman's amended complaint and Katzman's motion to file and serve a second amended complaint. Like the court in *Marisol*, the *Katzman* court concluded that local judicial rules authorize the televising of trials upon the court's discretion.¹⁰⁰ The *Katzman* court also held that the social science studies show that there is no harm to the judicial process in

91. *See id.* at 669.

92. *See id.* at 672-73.

93. *See id.* at 661.

94. *See id.* at 661.

95. *See id.*

96. *See id.*

97. *See id.*

98. *See id.*

99. *See id.* at 588-89.

100. *See id.* at 583-84.

televising trials, and that news reporting is more accurate with the presence of cameras in the courtroom compared than if cameras are not present.¹⁰¹ In its sweeping conclusion, the *Katzman* court pronounced that the advances in technology and the above-described experiments have demonstrated that the stated objections [to televised trials] can readily be addressed and should no longer stand as a bar to a presumptive First Amendment right of the press to televise as well as publish court proceedings, and of the public to view those proceedings on television.¹⁰²

It is interesting to note that the court cites no authority for its conclusion that there is a presumptive First Amendment right of the press to televise a trial, nor is their support for the conclusion that the public has a presumptive right to view the proceedings on television. There is no statement by the U.S. Supreme Court recognizing a presumptive First Amendment right to either televise trials or have a trial televised. Thus, the *Katzman* court may have exceeded its authority in making this constitutional declaration.

V. THE IMPACT OF TELEVISION ON PUBLIC ATTITUDES

There have been several studies attempting to quantify the impact of television cameras in the courtroom on the courtroom participants.¹⁰³ There is little research, if any, that quantifies the impact of televised court proceedings upon the public. Among other justifications given for the televising of trials is that televising will help to educate the public about how the court system works.¹⁰⁴ However, there is little empirical data that measures how much of an educational impact televised court proceedings have upon the public.¹⁰⁵ One of the advantages of a lengthy trial, such as O.J. Simpson's criminal trial,¹⁰⁶ is that public opinion pollsters were able to ask nationally representative samples about their opin-

101. *See id.* at 585-87.

102. *Id.* at 589.

103. *See, e.g.,* FEDERAL REPORT, *supra* note 69, at 7-32.

104. *See* Hodgkins, *supra* note 2, at 89; *see also* Harding, *supra* note 2, at 831 ("The purpose of the right of access is to provide the public with as much information as possible and to let members of the public decide which message they believe is most reliable.").

105. This makes sense because the theoretical construction initiated in the *Estes* decision places the focus of the harm of televising trials squarely inside the courtroom. After all, the inside of the courtroom is where the players are located who are directly involved with the trial and are most likely to be influenced by the disruptive force, if any, of a television camera. I argue, however, that while it may not be equally important, the impact of televised proceedings outside of the courtroom are worthy of consideration and study. *See* David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understandings of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 788-91 (1993).

106. "[T]he trial of O.J. Simpson . . . will focus the American public on our system of criminal justice with unprecedented intensity. The parties and this Court—indeed, the American justice system itself—have a strong interest in the quality and integrity of the information that the public receives concerning this trial. The issue now before this Court is nothing less than how the American public will receive information about the trial." Memorandum of Points and Authorities of Court TV in Opposition to Termination of Film and Electronic Coverage, *California v. Simpson*, Nov. 7, 1994 (No. BA0097211).

ions and perceptions of the trial.¹⁰⁷ This is particularly true in Simpson's trial because it lasted, from the start of the jury selection to the reading of the verdict, 372 days.¹⁰⁸ Several polling organizations asked the American public their view of the participants in the Simpson trial, as well as the public opinion toward the criminal justice system and race relations. Even though a large number of questions were asked, the unfortunate fact is that there were few questions that were asked by the same polling organization to the same group of respondents over time. Had this quality of information been available, it would have provided a valuable insight to the changes over time in the public's perception of Simpson's trial and the participants in that trial. In any event, the data that is available is quite revealing, especially when placed in context of the theoretical constructs of the holdings in *Estes* and *Chandler*.

A. PERCEPTIONS OF THE *SIMPSON* TRIAL PARTICIPANTS

The Gallup Organization conducted a poll from October 19 to October 22, 1995, asking individuals their perception of the actors in the Simpson trial.¹⁰⁹ The public perception during this time period indicated a very favorable view of the major participants in the trial, except for two of the defense participants: Johnnie Cochran and O.J. Simpson. Sixty-nine percent of the respondents viewed Marcia Clark favorably.¹¹⁰ The next most favorable participant was Judge Lance Ito, with sixty-one percent of the respondents viewing Judge Ito favorably.¹¹¹ Next was prosecutor Christopher Darden, whom sixty percent of the respondents viewed favorably.¹¹² Defense attorney Robert Shapiro was the next most favorably viewed, with fifty-five percent of the respondents reporting a favorable

107. All polling data is from the RPOLL file in the LEXIS/NEXIS NEWS database. The polling data is collected by the Roper Center at the University of Connecticut. In each figure, I have identified the polling agency that conducted the public opinion poll and the dates of the questionnaire. Any interpretation of the data is the responsibility of the author, and does not reflect the views of the Roper Center or any reported polling organization.

108. Other interesting statistics from Court TV are: the prosecution presented 72 witnesses, the defense 54; there were 9 prosecution attorneys who presented some evidence, and 11 defense attorneys who presented evidence; there were 488 exhibits presented by the prosecution and 369 exhibits presented by the defense; a total of 433 motions were filed; and Los Angeles County spent an estimated \$9.1 million to prosecute Simpson, while Simpson's defense team spent an estimated \$2.75 million.

109. The question asked by the Gallup Poll was: "Finally, I'd like your overall opinion of some people who were involved in the O.J. Simpson trial. As I read each name, tell me if you have a favorable or unfavorable opinion of this person—or if you have never heard of him or her." *Gallup Poll*, Public Opinion Online, Oct. 19-22, 1995, question 4, available in LEXIS NEWS Library, RPOLL File. The question then listed the names of the major participants in the trial: Marcia Clark, Johnnie Cochran, Robert Shapiro, Judge Lance Ito, Christopher Darden, and O.J. Simpson. *See id.* The poll was conducted by telephone, with 1229 participants. *See id.* The survey includes an over sampling of African-Americans with the results weighted to be representative of a national adult population. *See id.*

110. *See id.*

111. *See id.*

112. *See id.*

opinion.¹¹³

Both defense attorney Johnnie Cochran and defendant O.J. Simpson had more respondents reporting a negative opinion. Cochran was viewed favorably by only forty-two percent of the respondents (with a forty-seven percent negative rating) and Simpson was viewed favorably by only twenty-nine percent of the sample, with fifty-seven percent of the respondents reporting a negative opinion of Simpson.¹¹⁴

B. IMPACT OF THE SIMPSON TRIAL ON THE CRIMINAL JUSTICE SYSTEM

Perhaps not surprisingly, in consideration of the level of favorable attitudes toward the prosecution in the *Simpson* trial and the unfavorable attitudes toward Simpson's defense team, a large number of the participants in public opinion polls indicated that they felt the *Simpson* jury reached the wrong decision.¹¹⁵ One week after the *Simpson* verdict was announced,¹¹⁶ only thirty-five percent of the respondents thought that the jury made the right decision—that is, almost half of the participants (forty-nine percent) who thought the jury made the wrong decision. The following week, the percentage of participants believing the jury made the correct decision diminished to twenty-nine percent, with sixty percent of the participants stating that the jury made the wrong decision. Six months after the *Simpson* verdict, the Gallup Poll shows that the participants were almost evenly split on the issue. In the April 1996 poll, twenty-nine percent of the participants said the Simpson jury made the right decision, and sixty percent said the Simpson jury made the wrong decision.¹¹⁷ Without a more stringent multivariate analysis, it is difficult to conclude with any precision why there is so much fluidity in the poll numbers. One of the interesting findings is that in the October 12-14, 1995 poll and the October 19-22, 1996 poll, the percentage of participants

113. *See id.*

114. *See id.*

115. The CBS News Poll asked 1313 participants in a telephone poll the following question: "Do you think the jury's verdict of not guilty in the O.J. Simpson trial was the right verdict or the wrong verdict?" *CBS News Poll*, Public Opinion Online, Oct. 12-14, 1995, available in LEXIS, NEWS Library, RPOLL File. The CNN/USA Today Poll asked 1229 participants in a telephone poll the following question: "As you may know, the jury in the O.J. Simpson trial recently announced its verdict that Simpson is not guilty on the charges that he murdered Nicole Brown Simpson and Ron Goldman. Based on the facts presented in this case, do you think the jurors made the right decision or the wrong decision?" *CNN/USA Today Poll*, Public Opinion Online, Oct. 19-22, 1995, available in LEXIS, NEWS Library, RPOLL File. And the 1996 Gallup Poll asked 1001 participants in a telephone poll: "As you may know, the jury in the O.J. Simpson trial last year found Simpson not guilty on the charges that he murdered Nicole Brown Simpson and Ron Goldman. Based on the facts presented in this case, do you think the jurors made the right decision or the wrong decision?" *Gallup Poll*, Public Opinion Online, Apr. 23-25, 1996, available in LEXIS, NEWS Library, RPOLL File. The CBS News and 1995 CNN/USA Today polls include an African-American over sample and were weighted to be representative of a national adult population.

116. The Simpson verdict was announced on October 3, 1995. *See Nightline* (ABC television broadcast, Oct. 3, 1995).

117. *See CBS News Poll*, Oct. 12-14, 1995, *supra* note 115.

who said the jury decision was wrong stayed constant (forty-nine percent and forty-eight percent, respectively).¹¹⁸ It appears that the percentage of participants who viewed the jury decision as correct, resulting from the percentage of participants who either did not know if the decision was correct or refused to answer, decreased over time.¹¹⁹

Also available is data examining whether participants in the polls thought that the *Simpson* trial was fair. This data is important because the results go to the legitimacy of the court system.¹²⁰ When asked about the fairness of the *Simpson* trial, most participants answered that the trial was fair.¹²¹ The CBS News polls showed a high level of support for the proposition that the *Simpson* trial was fair, with seventy percent and eighty-eight percent of the respondents responding in the affirmative.¹²² Noticeably different is the NBC News-*Wall Street Journal* survey completed almost two weeks following the last CBS poll. Here, the NBC poll showed that almost half (forty-nine percent) of the participants felt that the trial was fair.¹²³ This dramatic difference is probably due to the slight difference in the wording of the survey question.¹²⁴ CBS News asked whether the participants thought *Simpson received* a fair trial.¹²⁵ Given that *Simpson* was found not guilty, it is a reasonable inference that as the

118. See *id.*; Gallup Poll, Apr. 23-25, 1996, *supra* note 115.

119. The change may be attributed to the difference in the wording of the poll questions. See HERBERT B. ASHER, POLLING AND THE PUBLIC: WHAT EVERY CITIZEN SHOULD KNOW 41-46 (1988). But the largest differences occur between the October 19-22, 1995 poll and the April 23-25, 1996 poll, which use virtually the same question. Thus, there seems to be a shift in attitude that cannot be attributed to changes in question wording. The reasons for the change may be because of continued media coverage of the *Simpson* trial that either portrayed *Simpson* more positively or portrayed the decision of the jury more positively than when the decision was announced.

120. Legitimacy and the status of the court system has in the public mind and is the subject of much study. See DAVID M. O'BRIEN, STORM CENTER: THE SUPREME COURT IN AMERICAN POLITICS (4th ed. 1996); Gregory A. Caldeira, *Neither the Purse nor the Sword: Dynamics of Public Confidence in the Supreme Court*, 80 AM. POL. SCI. REV. 1209, 1210-11 (1986); David W. Adamany, *Legitimacy, Realigning Elections, and the Supreme Court*, 1973 WIS. L. REV. 790, 807-15.

121. The September 29-30 and October 3, 1995 CBS News Polls asked 1046 and 1241 participants, respectively: "Do you think O.J. Simpson has received a fair trial or don't you think he has received a fair trial?" *CBS News Polls*, Public Opinion Online, Sept. 29-30 and Oct. 3, 1995, available in LEXIS, NEWS Library, RPOLL File. The October 27-31, 1995 NBC News/*Wall Street Journal* Poll asked 1465 adults in a telephone poll: "In your opinion, was the O.J. Simpson trial a fair trial or not a fair trial." *NBC News/Wall Street Journal Poll*, Public Opinion Online, Oct. 27-31, 1995, available in, LEXIS, News Library, RPOLL File. The three polls contained an over sample of African-Americans and were weighted to be representative of a national adult population.

122. See *CBS News Poll*, Public Opinion Online, Sept. 29-30, 1995, question 3, available in LEXIS, NEWS Library, RPOLL File; *CBS News Poll*, Public Opinion Online, Oct. 3, 1995, question 8, available in LEXIS, NEWS Library, RPOLL File.

123. See *NBC News/Wall Street Journal Poll*, Oct. 27-31, 1995, available in LEXIS, NEWS Library, RPOLL File.

124. See Bruce Bartlett, *Polls Pop Up Every Day, But Can They Be Trusted*, DETROIT NEWS, Oct. 9, 1996, at A9; Vicki G. Morwitz & Carol Pluzinski, *Do Polls Reflect Opinions or Do Opinions Reflect Polls?*, J. CONSUMER RES., June 1, 1996, at 53. See generally HOWARD SCHUMAN & STANLEY PRESSER, QUESTIONS AND ANSWERS IN ATTITUDE SURVEYS (1991).

125. See *CBS News Poll*, Sept. 29-30, 1995, *supra* note 122.

winning party, Simpson did receive a fair trial. The NBC News poll asked whether the trial was a fair trial or not. This slight wording may shift from the specific fairness of the trial on Simpson to the general fairness of the trial. Given that large percentages of poll participants favorably viewed the prosecutors, and thought that the jury made an incorrect decision, the participants in the NBC poll would more likely feel that the trial was not fair because the more favorably viewed parties did not win.

The *Simpson* criminal trial polling also shows that the public has less confidence in defense attorneys than in prosecutors. Survey participants indicated that as a result of the *Simpson* trial, they had less confidence in the ethical tactics taken by defense attorneys, while the participants' attitudes stayed the same toward the ethical tactics taken by prosecutors.¹²⁶ Forty-seven percent of the respondents had less confidence in defense attorneys to act in an ethical manner, while one-third (thirty-three percent) of the respondents had less confidence in prosecutors to act ethically.¹²⁷ Forty-eight percent of the respondents had the same perception of prosecutorial ethics before and after the *Simpson* trial.¹²⁸

There are two interesting points with this data. The first is that although there is a significant difference in the change of confidence levels between prosecutors and defense attorneys, it may be that the public had a low regard for prosecutorial ethics before the *Simpson* trial; thus, at the end of the trial, the public still had little confidence in prosecutorial ethics. The second point is that the poll question did not ask the respondents about the prosecution or defense attorneys in the *Simpson* trial, but asked about the general category of prosecutors or defense attorneys. Given the stem wording of the of the question "confidence . . . in the criminal justice system," this data may reflect that the perception of the trial participants by a national sample of adults spilled over to attorneys generally. Whether the public is correct in its assessment of the ethical conduct of the *Simpson* trial attorneys, almost one-half of the public perceives that defense attorneys generally defend their clients by resorting to unethical or irresponsible tactics.¹²⁹

This lessened confidence in the criminal justice system spilled over into two other sets of actors: jurors and police officers. The polls asked participants about the change in their confidence in the criminal justice sys-

126. 1225 adults were asked by the Gallup Organization for CNN/USA Today: "As a result of the O.J. Simpson trial, do you have more confidence, less confidence, or do you have about the same level of confidence in each of the following aspects of the criminal justice system? That defense attorneys defend their clients without resorting to unethical or irresponsible tactics?" The question for prosecutors was the same stem, with the following inserted after the first question: "That prosecutors try their cases without resorting to unethical or irresponsible tactics?" *CNN/USA Today Poll*, Public Opinion Online, Oct. 5-7, 1995, questions 28 & 29, available in LEXIS, NEWS Library, RPOLL File. The survey included an over sample of African-Americans and was weighted to their proportion in the national adult population. See *id.*

127. See *id.*

128. See *id.*

129. See *id.*

tem, specifically whether attitudes changed about the ability of police to do their duties professionally and juries' abilities to reach a verdict without letting racial attitudes affect their judgment.¹³⁰ The participants responded that forty-three percent had less confidence in the police to perform their duties professionally and ethically, while forty-four percent viewed the police's abilities the same as before the Simpson trial.¹³¹ Forty-four percent of the participants had less confidence that jurors could decide a case without letting racial biases become a consideration, and thirty-nine percent of the participants said that they had the same level of confidence that racial attitudes would not affect a jury's decision making calculus.¹³²

It appears that the *Simpson* trial had a significant impact on the public's confidence toward two important institutions in our criminal justice system. It may be that this impact is short-lived, and that confidence levels have returned to their pre-*Simpson* trial level. Even though the public is concerned about racial attitudes affecting juries' decision-making abilities, members of the public are still willing to serve on juries.¹³³ Forty-four percent of the participants said that they had the same amount of interest in serving as a juror.¹³⁴ Over one-third (thirty-seven percent) said that they had less interest in serving as a juror as a result of the *Simpson* trial.¹³⁵ But a combined sixty percent said they had either more or the same amount of interest in serving as a juror now as they had before the *Simpson* trial.¹³⁶ This seemingly encouraging level of civic duty may be attributed to a number of factors, such as potential jurors want to participate in an effort to dilute the influence of racial attitudes in the jury room, or maybe, and related to this, they desire to serve because they think that they will be better able to produce a just result. These are hypotheses that need to be studied further and, at this point, are mere speculation and should be treated accordingly.

130. The Gallup Organization asked 1225 adults for CNN/USA Today: "As a result of the O.J. Simpson trial, do you have more confidence, less confidence, or do you have about the same level of confidence in each of the following aspects of the criminal justice system?" *CNN/USA Today Poll*, Oct. 5-7, 1995, question 31, *supra* note 126. "That police officers perform their duties in a professional and ethical manner?" *Id.* at question 31. Gallup also asked the same stem, followed by: "That jurors can reach a verdict in a trial without letting their racial attitudes affect their judgment." *Id.* at question 30. The survey included an over sample of African-Americans who were weighted to their normal proportion in the national population. *See id.*

131. *See id.* at question 31.

132. *See id.* at question 30.

133. The Gallup organization asked 1225 adults for CNN/USA Today: "As a result of the O.J. Simpson trial, do you have more interest, less interest, or about the same amount of interest in serving as a juror in a trial as you have in the past." *Id.* at question 32. The survey included an over sample of African-Americans who were weighted to their normal proportion in the national adult population. *See id.*

134. *See id.*

135. *See id.*

136. *See id.*

C. MEDIA IMPACT AND THE SIMPSON TRIAL

Not surprisingly, there were a large number of questions asked about the impact of the media upon the *Simpson* trial and the viewers of the trial. A large number of people watched the trial. CBS News asked a national survey the amount of time spent watching the news about the *Simpson* trial.¹³⁷ Slightly less than half of the poll participants (forty-six percent in each survey question) said that they followed news concerning the *Simpson* trial for two hours or less either on average or during the last week.¹³⁸ Approximately one-fourth of the participants (twenty-five and twenty-six percent, respectively) said that they followed *Simpson* trial news for between four to six hours a week.¹³⁹ In a separate Gallup Poll, eighty percent of the respondents surveyed said that they heard of the *Simpson* verdict simultaneously with its announcement.¹⁴⁰

The *Los Angeles Times*, CBS News, and *Newsweek* asked several questions to gauge the public's perception of the impact of televising the *Simpson* trial. Most of the participants in the CBS News poll thought that televising the *Simpson* trial affected the trial in some way.¹⁴¹ Fifty-four percent of the participants responded that televising the trial did have an effect on the trial.¹⁴² Forty percent thought that there was no effect on the trial by televising it.¹⁴³

Newsweek conducted a similar poll.¹⁴⁴ The *Newsweek* poll, however, asked what type of impact having television in the courtroom had on the trial.¹⁴⁵ Forty-eight percent of the participants thought that cameras in

137. The CBS News Poll asked 1569 adult participants: "Since the trial began, on average, how many hours a week have you spent following news about the O.J. Simpson trial?" *CBS News Poll*, Public Opinion Online, Sept. 29-Oct. 1, 1995, question 18, available in LEXIS, NEWS Library, RPOLL File. The poll asked another question: "During this last week, how many hours did you spend following news about the O.J. Simpson trial?" *Id.* at question 17. The sample included an over sample of African-Americans, and the results were weighted to be representative of the national adult population. *See id.* The percentage of people answering the number of hours they followed the news either "on average" or "during the last week" are essentially the same. *See id.*

138. *See id.*

139. *See id.*

140. The Gallup Organization asked 639 adults for CNN/USA Today: "Did you personally watch or listen to the verdict announcement on television or radio today as it was being announced, or did you hear about it later?" *CNN/USA Today Poll*, Public Opinion Online, Oct. 3, 1995, question 20, available in LEXIS, NEWS Library, RPOLL File.

141. CBS News asked 1241 participants: "Do you think televising the O.J. Simpson trial made a significant difference in the outcome of the trial?" *CBS News Poll*, Public Opinion Online, Oct. 3, 1995, question 10, available in LEXIS, NEWS Library, RPOLL File.

142. *See id.*

143. *See id.*

144. Princeton Survey Research Associates asked 760 participants for *Newsweek*: "Do you think having television in the courtroom had a positive or negative influence on the trial, or didn't it make much difference either way?" *Princeton Survey Research Associates/Newsweek Poll*, Public Opinion Online, Oct. 4-6, 1995, question 16, available in LEXIS, NEWS Library, RPOLL File. The survey included an African-American over sample, and was weighted to be representative of the national adult population. *See id.*

145. *See id.*

the courtroom had a negative influence on the trial.¹⁴⁶ Approximately one-third thought there was no influence on the trial, and fifteen percent thought there was a positive influence.¹⁴⁷ The results from this question show that a significant portion of the public thought having cameras in the courtroom had a negative influence on the trial, but negative in what respect? Was the impact felt upon any particular party in the courtroom, or was the impact on those watching a court proceeding?

The *Los Angeles Times* poll provides a partial answer.¹⁴⁸ This poll shows that exactly one-half of the public thought that there was no effect either for or against O.J. Simpson.¹⁴⁹ Twenty-eight percent believed the live television coverage biased the trial in favor of Simpson, with only nine percent reporting the camera biased the trial against Simpson.¹⁵⁰ If one is to take the poll findings simultaneously, which is difficult because the polls are based upon three national random samples, the conclusion is that the majority of the population felt that television coverage did affect the Simpson trial, that effect was negative, but the effect did not bias the trial. What could this conclusion mean? Perhaps what the poll results show is that there was some degree of prejudice in the trial because of cameras, but the prejudice was not so large as to make a significant difference in the trial. This finding would comport with the view of the *Estes* Court that any effect television cameras may have on the trial is minimal.¹⁵¹

Near the beginning of the *Simpson* trial, ABC News asked a national sample whether the *Simpson* trial should be televised.¹⁵² Almost seven out of ten participants (sixty-nine percent) said that the trial should not be televised.¹⁵³ Twenty-nine percent of the participants said the trial should be televised.¹⁵⁴

After the jury returned the verdict, participants in another survey were asked about their confidence in the criminal justice system and the interaction of the electronic media in the system.¹⁵⁵ Two-thirds of those par-

146. *See id.*

147. *See id.*

148. The *Los Angeles Times* asked 807 adults: "Do you think the live television cameras in the O.J. Simpson trial biased the trial in favor of O.J. Simpson, biased the trial against O.J. Simpson, or didn't the live television cameras have any effect on the trial one way or the other?" *Los Angeles Times Poll*, Public Opinion Online, Oct. 3, 1995, question 11, available in LEXIS, NEWS Library, RPOLL File.

149. *See id.*

150. *See id.*

151. *See Estes*, 381 U.S. at 540.

152. ABC News asked 1031 adults: "On another subject, thinking about the O.J. Simpson trial in Los Angeles (he is charged with the murder of his ex-wife, Nicole Simpson and her friend, Ronald Goldman), do you think the judge in the O.J. Simpson case should or should not allow cameras in the courtroom to show the trial on television?" *ABC NEWS Poll*, Public Opinion Online, Oct. 5-9, 1995, question 6, available in LEXIS, NEWS Library, RPOLL File.

153. *See id.*

154. *See id.*

155. The Gallup Organization asked 1005 adults for CNN/USA Today: "As a result of the O.J. Simpson trial, do you have more confidence, less confidence, or do you have the

ticipants said that they had less confidence in the criminal justice system when the media gave a great deal of attention to the trial.¹⁵⁶ One-fourth of the participants had the same level of confidence, and only seven percent of the participants had more confidence in the criminal justice system.¹⁵⁷ This is a very disturbing finding for those advocates of televised court proceedings. Compared with polls that showed the public thought the *Simpson* trial was fair, when asked about the fairness of the trial in connection with the amount of media coverage, the public reported that confidence in the criminal justice system was lessened.¹⁵⁸

D. THE SIMPSON TRIAL, CAMERAS, AND RACE RELATIONS

The polling data also show that the public had strong attitudes about race relations connected with the *Simpson* trial.¹⁵⁹ One of the questions asked by ABC News concerned the connection between media coverage of the trial and the impact of that coverage on race relations.¹⁶⁰ Sixty percent of the participants said that the media coverage of the trial worsened race relations, thirty-one percent said media coverage had no effect, and five percent said race relations were improved because of the coverage.¹⁶¹ Certainly this question does not address the matter of cameras in the courtroom per se, but does bear on the impact that media coverage may have on the population. There may be a strong correlation between those who view the media coverage as negatively affecting the *Simpson* trial and those who view that coverage as worsening race relations. Unfortunately, the data as it now stands are not capable of being tested.

E. A STATEMENT ABOUT THE WILLIAM KENNEDY SMITH TRIAL

William Kennedy Smith, nephew of United States Senator Edward Kennedy, was acquitted of sexual battery and first-degree misdemeanor

same level of confidence in each of the following aspects of the criminal justice system that the criminal justice system . . . can come to a fair decision even when the media pay a great deal of attention to the trial?" *CNN/USA Today Poll*, Public Opinion Online, June 5-6, 1995, question 75, available in LEXIS, NEWS Library, RPOLL File.

156. *See id.*

157. *See id.*

158. This poll question does not readily measure the influence of a televised trial on the level of confidence in the criminal justice system. It may be that the media coverage this question measured is the coverage generated outside of the courtroom and not the actual televising of the trial itself.

159. Some have interpreted the data to mean that those who are now arguing for a curtailment of televising trials are not motivated by "new arguments," but instead represent the anger of white Americans at a jury verdict that many of them believe was not just.

160. ABC News asked 618 adults: "Has news media coverage of the *Simpson* trial made race relations in this country better, worse, or hasn't it affected race relations much one way or the other?" *ABC News Poll*, Public Opinion Online, Oct. 5-9, 1995, question 10, available in LEXIS, NEWS Library, RPOLL File. The national sample includes an over sample of African-Americans and the results are weighted to be representative of a national adult population. *See id.*

161. *See id.*

battery in December of 1991.¹⁶² The *Smith* trial generated a large amount of publicity, and many people were interested in the trial.¹⁶³ Lasting ten days, this trial naturally became the target of extensive media coverage because of the Kennedy family's fortune and political status, the chic Palm Beach bars, and the issue of date rape.¹⁶⁴ The jury took seventy-seven minutes to reach its decision of not guilty.¹⁶⁵ The presiding judge described the press as "barracudas" because of their aggressive coverage of the trial.¹⁶⁶ The effects of the trial were varied, with some commentators noting that the trial would discourage women from reporting rape, and others claiming that the trial demystified the judicial process and clarified relationship rules.¹⁶⁷

Polling organizations asked a portion of the population whether the *Smith* trial should have been televised.¹⁶⁸ Almost three-quarters of those surveyed said that the *Smith* trial should not have been televised.¹⁶⁹ Twenty-three percent agreed with the decision to televise, and three percent had no opinion.¹⁷⁰

In addition to asking whether the *Smith* trial should have been televised, the polling organizations asked whether trials like the *Smith* trial should be televised.¹⁷¹ Almost two-thirds of the respondents (sixty-four percent) said rape trials should not be televised, twenty-eight percent said rape trials should be televised, and eight percent did not know or refused to answer.¹⁷²

Although one can inject as many racial arguments as one desires into the *Simpson* trial, it is difficult for those arguments to stick in the *Smith* trial, particularly since all of the participants in the *Smith* trial were white. Thus, how does one explain the public's reaction to courtroom trials that

162. Michael Blumfield, *Jury: Smith Not Guilty of Rape; Jurors Take 77 Minutes to Make Their Decision*, ORLANDO SENTINEL, Dec. 12, 1991, at A1.

163. A Times Mirror Poll asked 1006 adults what was the story the survey participants followed most closely. The number one item was the *Smith* trial, with 28 percent of the respondents reporting that was the story they followed most closely. Following the *Smith* trial was the end of Mikhail Gorbachev's rule (20%), the release of the last American hostages (18%), and the condition of the U.S. economy (12%). *Times Mirror Poll*, Public Opinion Online, Jan. 24, 1992, available in LEXIS, NEWS Library, RPOLL File.

164. See Timothy Clifford & Shirley Perlman, *Willie Walks: It's a Quick Acquittal; Palm Beach Jury Takes Just Over Hour to Decide*, NEWSDAY, Dec. 12, 1991, at 5.

165. See Blumfield, *supra* note 162, at A1.

166. *Id.*

167. See Patricia Edmonds, *Experts: Who Emerged the Real Victims?*, USA TODAY, Dec. 12, 1991, at A1.

168. The Gallup Organization asked 1005 adults: "All things considered, do you think the William Kennedy Smith rape trial should have been televised, or not [between December 12, 1991 and December 15, 1991]?" *Gallup Poll*, Public Opinion Online, Jan. 24, 1992, question 22, available in LEXIS, NEWS Library, RPOLL File.

169. See *id.*

170. See *id.*

171. Gordon S. Black and *USA Today* asked 605 adults on December 11, 1991: "Do you think televising rape trials like this [William Kennedy Smith] trial is a good idea or a bad idea?" *USA Today Poll*, Public Opinion Online, Dec. 11, 1991, question 9, available in LEXIS, NEWS Library, RPOLL File.

172. See *id.*

are not televised as in the Smith example? Are individuals simply too ashamed or embarrassed to have incidents of alleged rape played over the television? And why is it that in the two most broadcast trials in the last six years, the public opinion polls show that the public does not desire to have these trials televised? In a participatory democracy, should the people's desire to not televise trials be heard?

VI. CONCLUSION

Most of the research, both theoretical and experimental, that has considered the question of whether cameras should be allowed in the courtroom has focused on the participants that are inside of the courtroom: the judge, the attorneys, the witnesses, and the jurors. It makes sense that what goes on inside of the courtroom has been the focus of these studies. After all, the courts are theoretically supposed to be immune to the effects of public opinion outside of the courtroom. The situation posed by televised court proceedings raises an additional consideration. Namely, is the risk of damaging the legitimacy of the courts worth the marginal benefits of televising the proceeding? The available evidence suggests that there is not a significant educational value to televising trials.

Further, the *Minnesota Study*¹⁷³ concludes that electronic media coverage (EMC) witnesses were significantly more nervous than non-EMC witnesses, and the EMC witnesses were as clear as conventional media witnesses, although both groups were less clear than control witnesses.¹⁷⁴ Alternatively, EMC witnesses required significantly fewer prompts to recall items, although the amount and accuracy of information provided were the same compared to conventional media witnesses and the control group.¹⁷⁵ The researchers of the study concluded that the presence of the camera in the courtroom had a perceived psychological effect, although there appears to be no significant positive or negative effects of cameras in the courtroom.¹⁷⁶

This study is important, and more empirical analysis needs to be performed to determine the effect of cameras within the courtroom.¹⁷⁷ However, scholars should be concerned about the impact televising court proceedings has on the public. Polling public opinion in the *Simpson* trial seems to indicate the presence of some degree of risk that there is a correlation between televising trials and the loss of confidence in the judicial

173. See Eugene Borgida et al., *Cameras in the Courtroom: The Effects of Media Coverage on Witness Testimony and Juror Perceptions*, 14 *LAW & HUM. BEHAV.* 489, 504-07 (1990) (study of undergraduate students at the University of Minnesota in simulated courtroom scenarios with electronic media coverage, conventional media coverage, and no media coverage) [hereinafter *Minnesota Study*].

174. See *id.* at 502.

175. See *id.* at 503-04.

176. See *id.* at 504-05.

177. The authors of the *Minnesota Study* correctly note that the results of this study cannot be generalized because a laboratory environment is different from an actual trial, and the participants were undergraduate university students. See *id.* at 506.

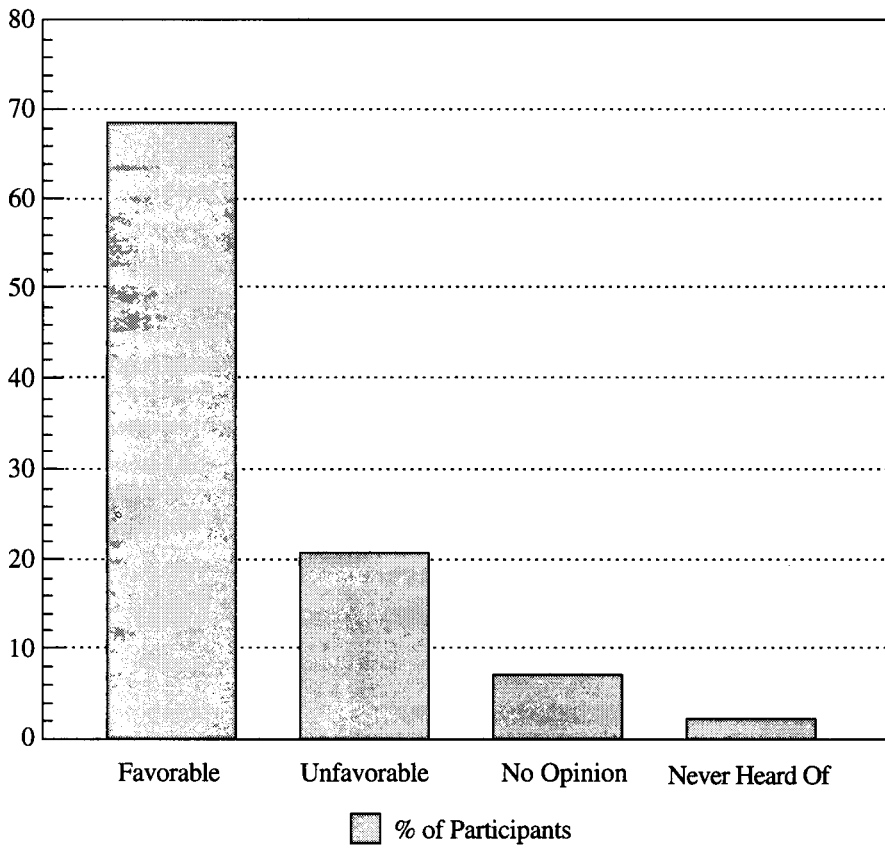
system. The Simpson data superficially indicate that significant numbers of the public lost confidence in defense attorneys, the police, and jurors. As noted earlier, this impact is not limited to the specific participants in the *Simpson* trial, but were applied to these generalized categories of participants. Further, according to the opinion polls, the public believes that cameras in the courtroom do have some type of influence on the proceeding; however, the direction of the effect is not clear.

This Comment attempts to explore whether televised court proceedings have an impact on the public, and if so, whether that impact should be a factor when determining if cameras should be allowed in the courtroom. It is dangerous to make any policy decision based upon evidence obtained in one trial, particularly one like the *Simpson* trial. At the same time, the *Simpson* trial does allow a wealth of preliminary public opinion data for exploratory, not confirmatory, purposes.

In the three decades since *Estes*, there has not been any systematic study that provides the courts or the legislatures with sufficient evidence to make an informed decision on the impact of televised legal proceedings on the public. The evidence that has been presented is either anecdotal, or is so limited that it cannot be generalized. Before going any further with a procedure that may imperceptibly affect a trial or lessen the public's confidence in the courts, rigorous empirical analysis should be performed. Until the effects, if any, of televised proceedings are known with any degree of certainty, the television camera should be turned off to protect the defendant and the courts.

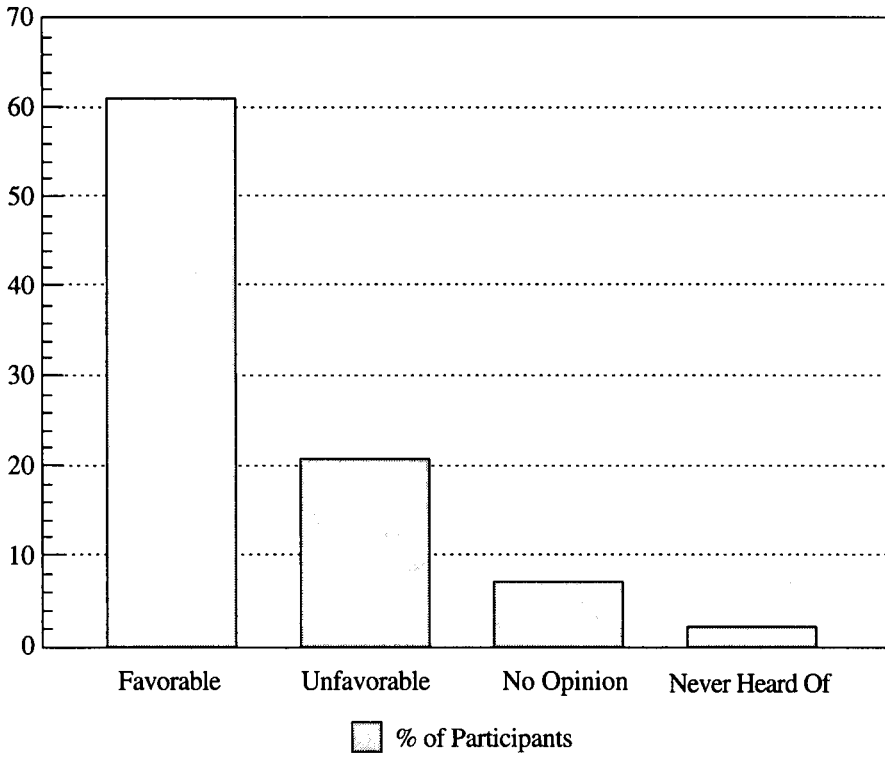
APPENDIX

FIGURE 1. MASS PERCEPTION OF MARCIA CLARK



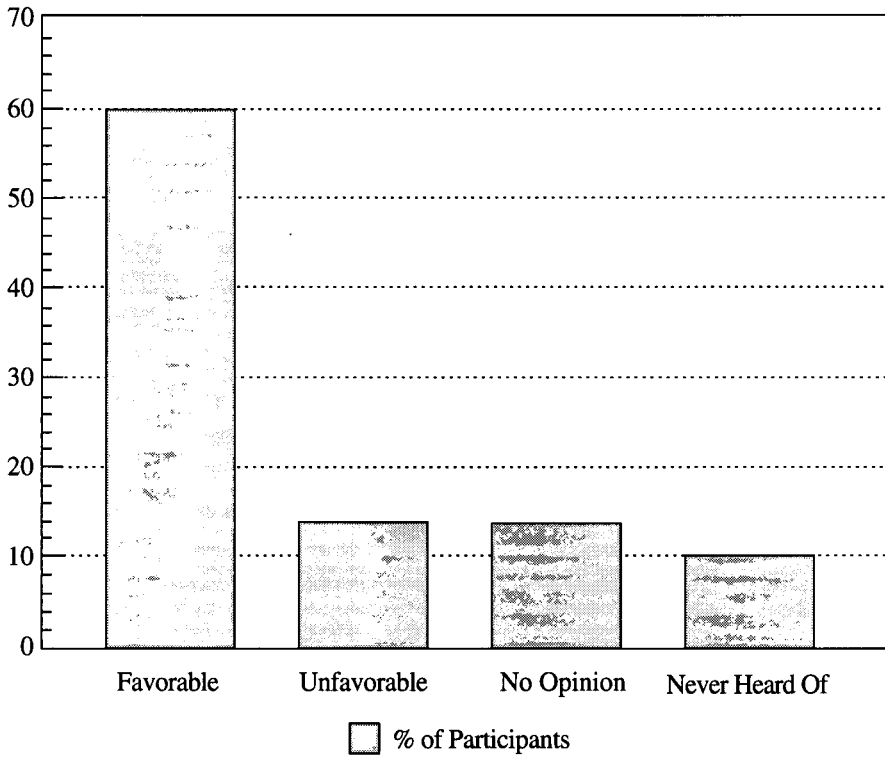
Source: Gallup Poll October 19-22, 1995

FIGURE 2. MASS PERCEPTION OF JUDGE LANCE ITO



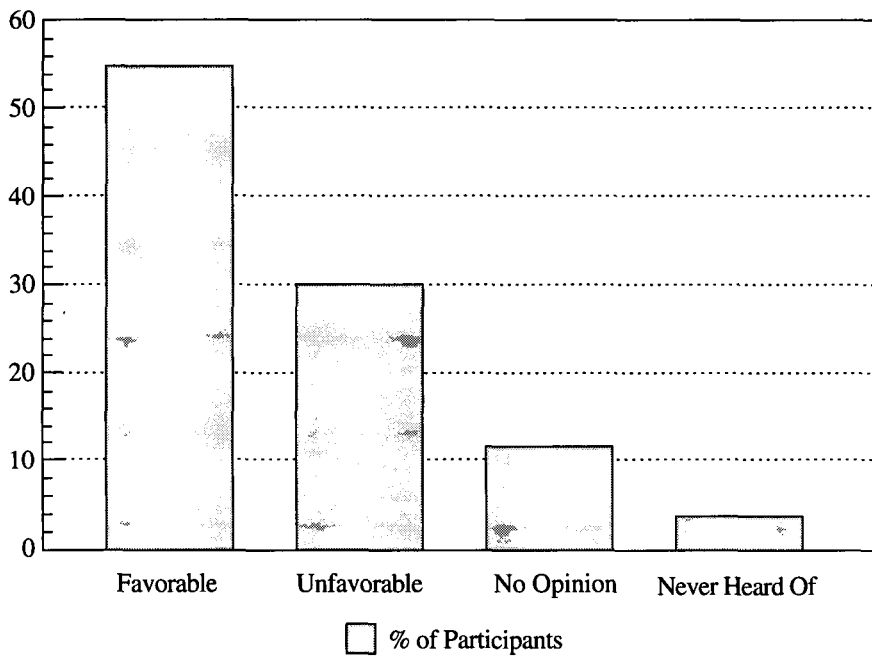
Source: Gallup Poll October 19-22, 1995

FIGURE 3. MASS OPINION OF CHRISTOPHER DARDEN



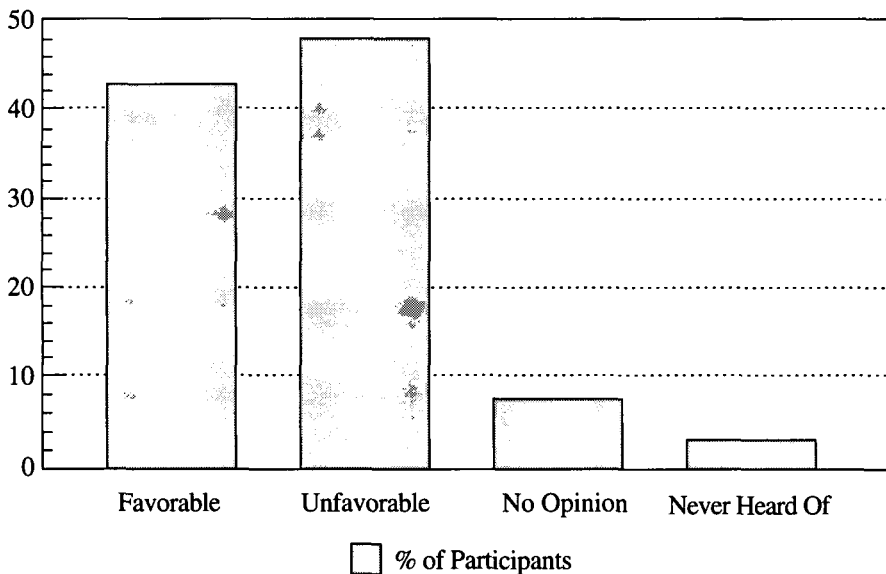
Source: Gallup Poll October 19-22, 1995

FIGURE 4. MASS PERCEPTION OF ROBERT SHAPIRO



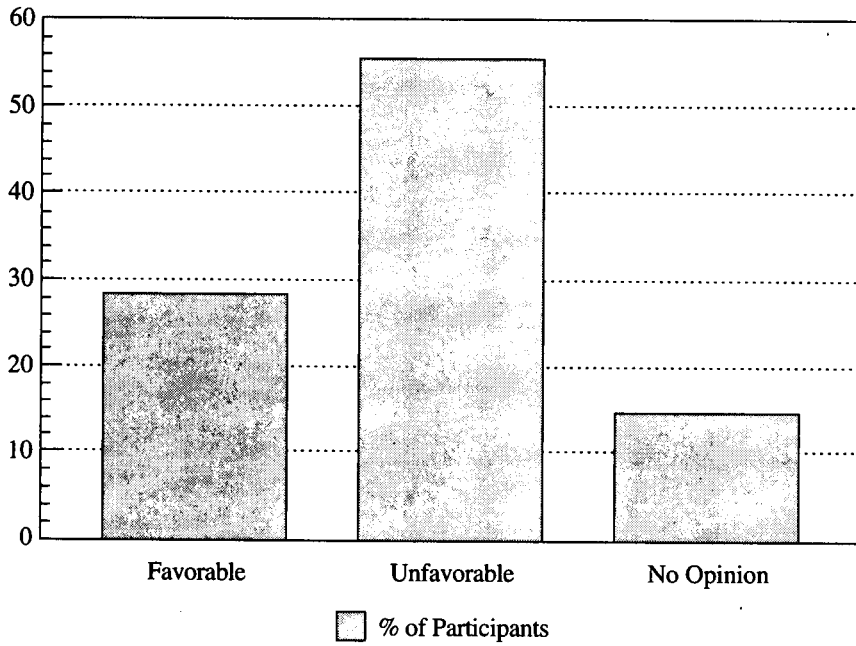
Source: Gallup Poll October 19-22, 1995

FIGURE 5. MASS PERCEPTION OF JOHNNIE COCHRAN



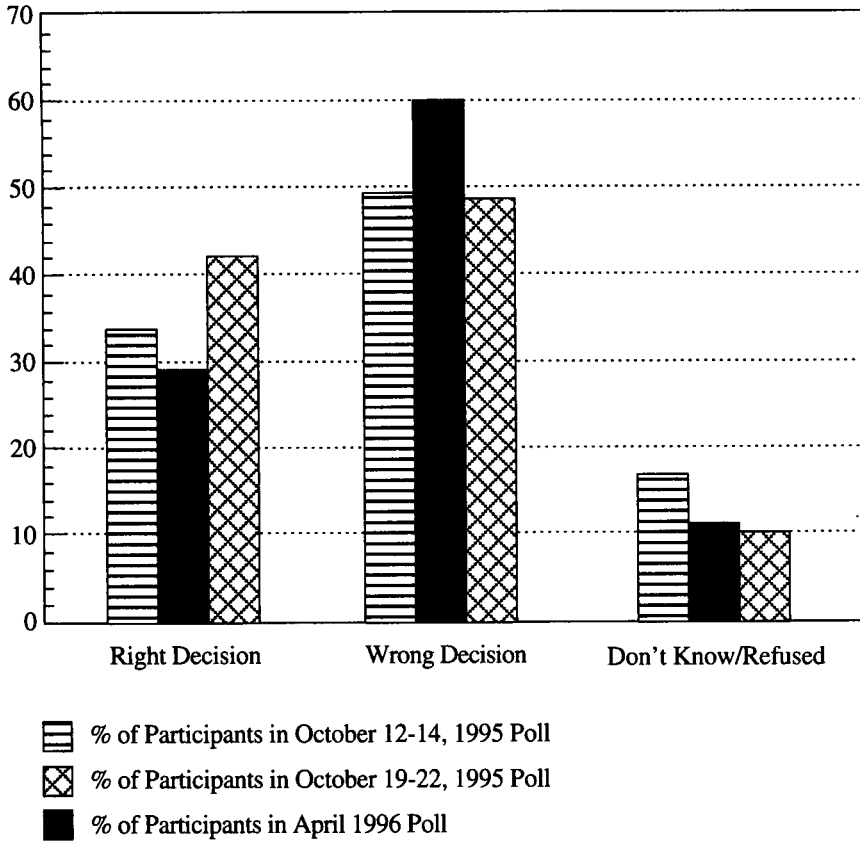
Source: Gallup Poll October 19-22, 1995

FIGURE 6. MASS OPINION OF O.J. SIMPSON



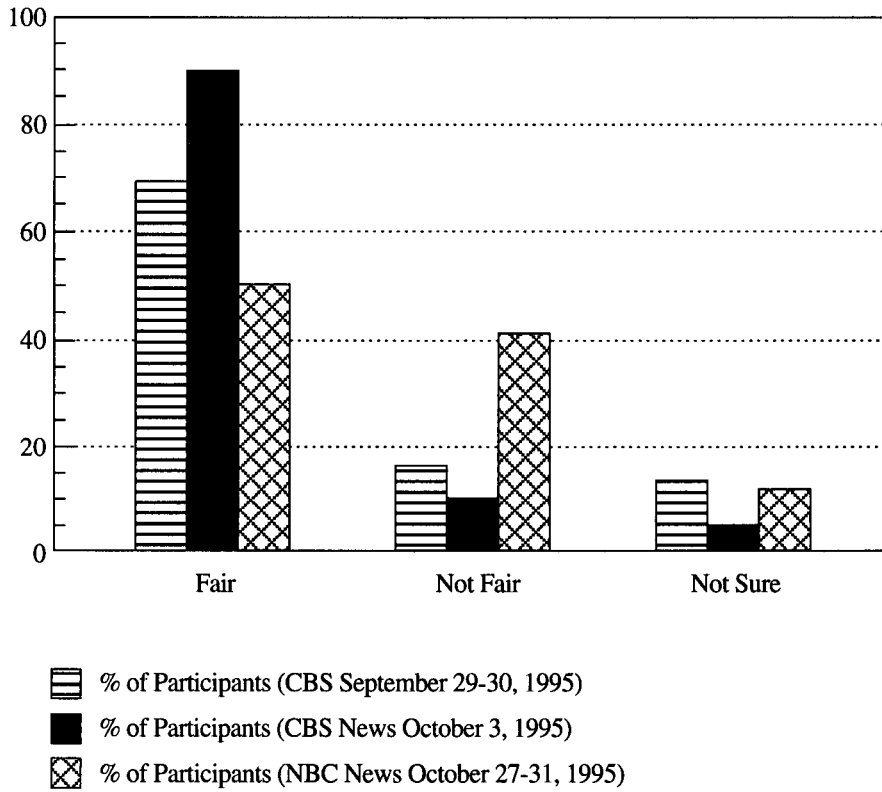
Source: Gallup Poll October 19-22, 1995

FIGURE 7. MASS PERCEPTION OF THE SIMPSON JURY DECISION



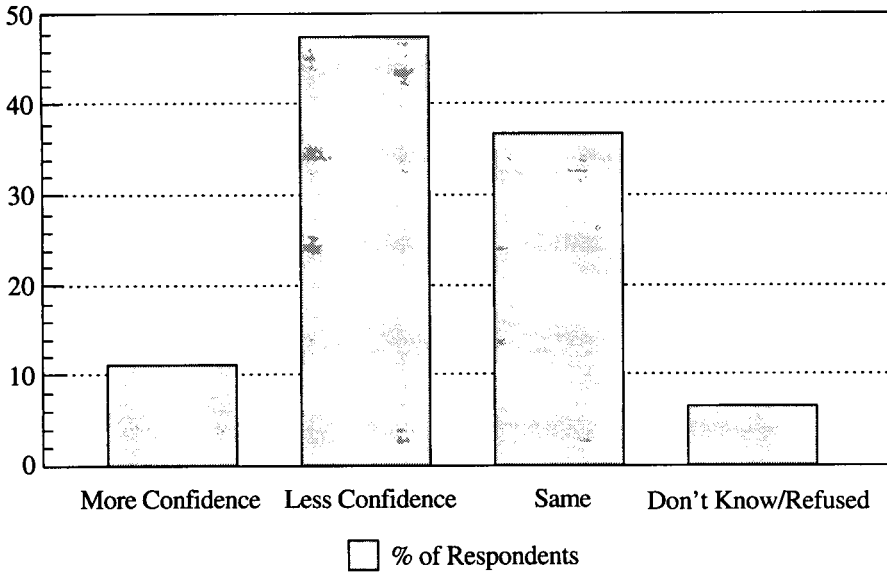
Source: CBS News, October 12-14, 1995; CNN/USA Today October 19-22, 1995 & Gallup Poll April 23-25, 1996

FIGURE 8. MASS PERCEPTION OF THE FAIRNESS OF THE SIMPSON TRIAL



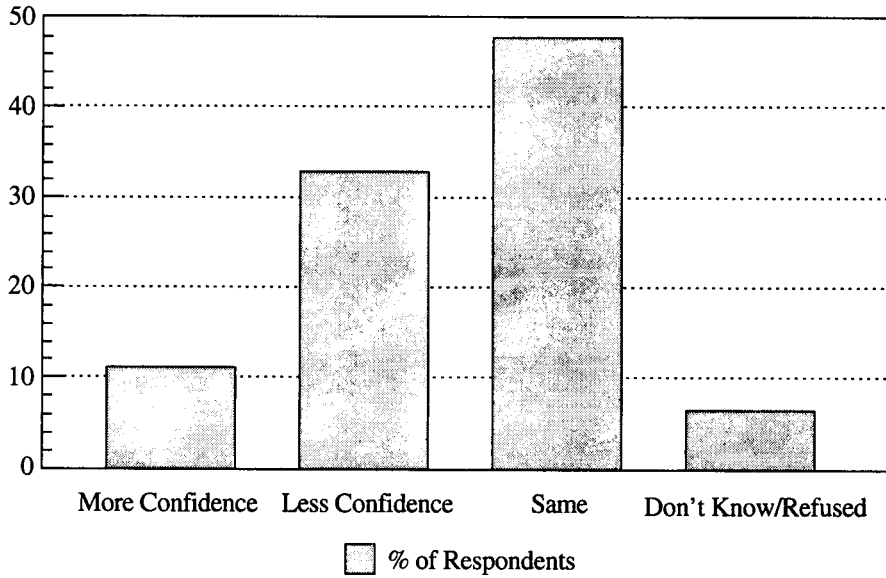
Source: CBS News September 29-30 1995; CBS News October 3, 1995; NBC News/Wall Street Journal Poll, October 27-31, 1995

FIGURE 9. AMOUNT OF PUBLIC CONFIDENCE THAT DEFENSE ATTORNEYS DEFEND THEIR CLIENTS WITHOUT RESORTING TO UNETHICAL IRRESPONSIBLE TACTICS AFTER THE SIMPSON TRIAL



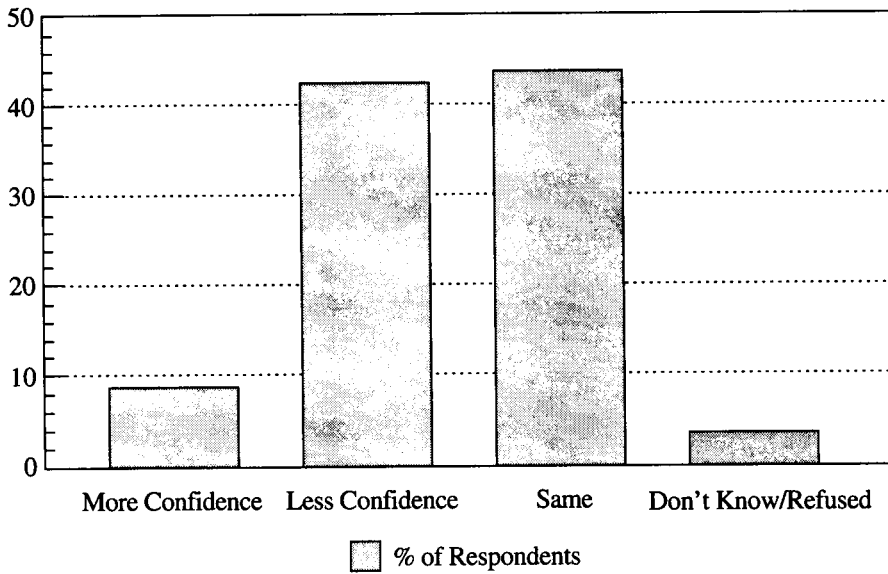
Source: CNN/USA Today Gallup Poll October 5-7, 1995

FIGURE 10. AMOUNT OF PUBLIC CONFIDENCE THAT PROSECUTORS TRY THEIR CASES WITHOUT RESORTING TO UNETHICAL OR IRRESPONSIBLE TACTICS AFTER THE SIMPSON TRIAL



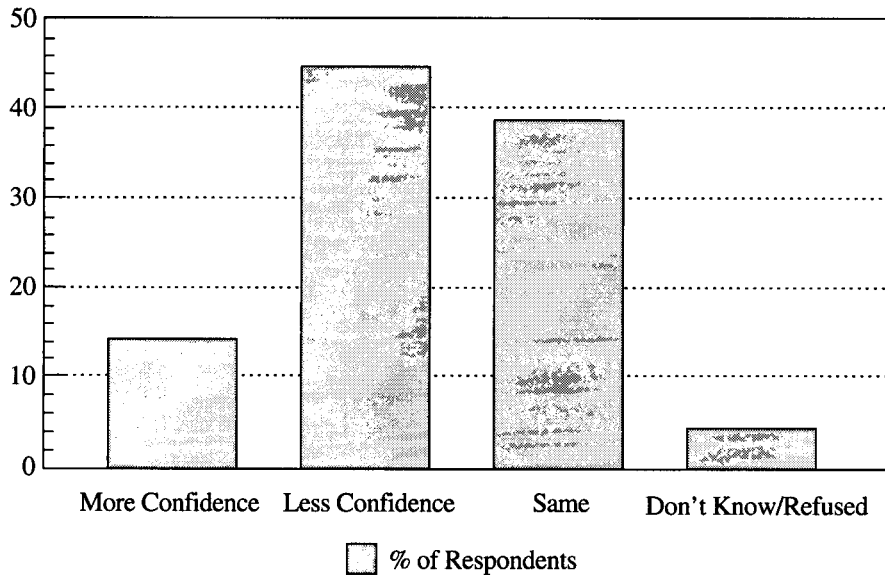
Source: CNN/USA Today Gallup Poll October 5-7, 1995

FIGURE 11. AMOUNT OF PUBLIC CONFIDENCE THAT POLICE OFFICERS PERFORM THEIR DUTIES IN A PROFESSIONAL AND ETHICAL MANNER AFTER THE SIMPSON TRIAL



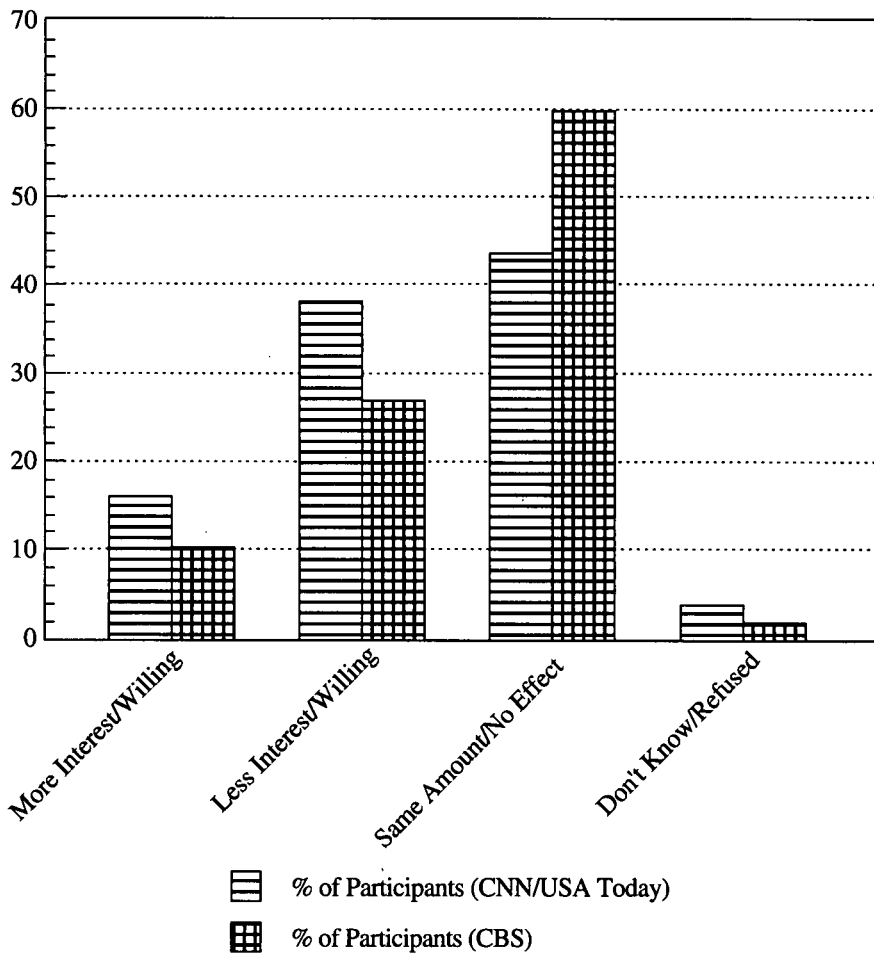
Source: CNN/USA Today Gallup Poll October 5-7, 1995

FIGURE 12. AMOUNT OF PUBLIC CONFIDENCE THAT JURORS CAN REACH A VERDICT IN A TRIAL WITHOUT LETTING THEIR RACIAL ATTITUDES AFFECT THEIR JUDGMENT AFTER THE SIMPSON TRIAL



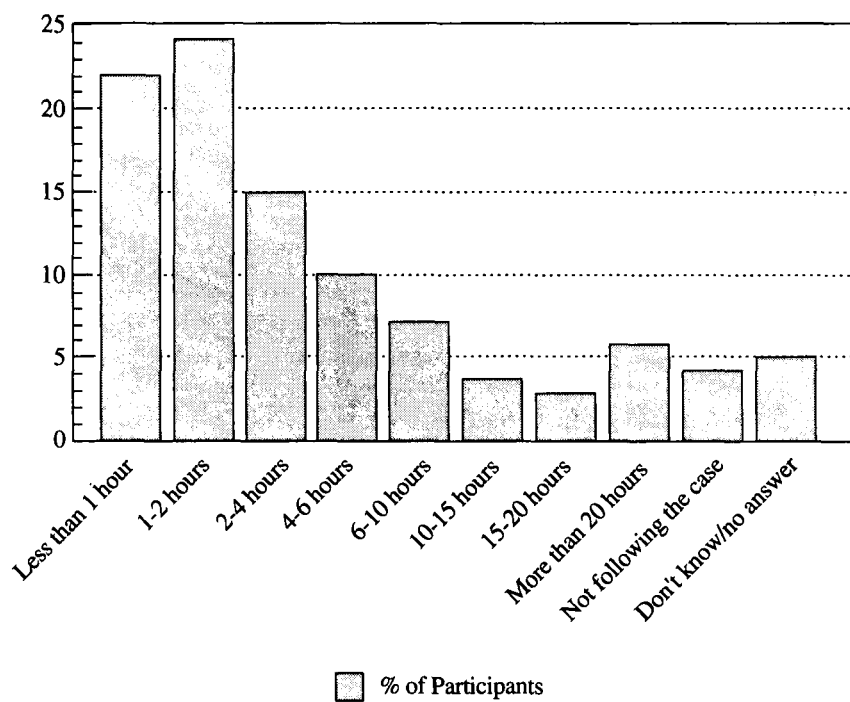
Source: CNN/USA Today Gallup Poll October 5-7, 1995

FIGURE 13. AMOUNT OF INTEREST IN SERVING AS A JUROR AS A RESULT OF THE SIMPSON TRIAL



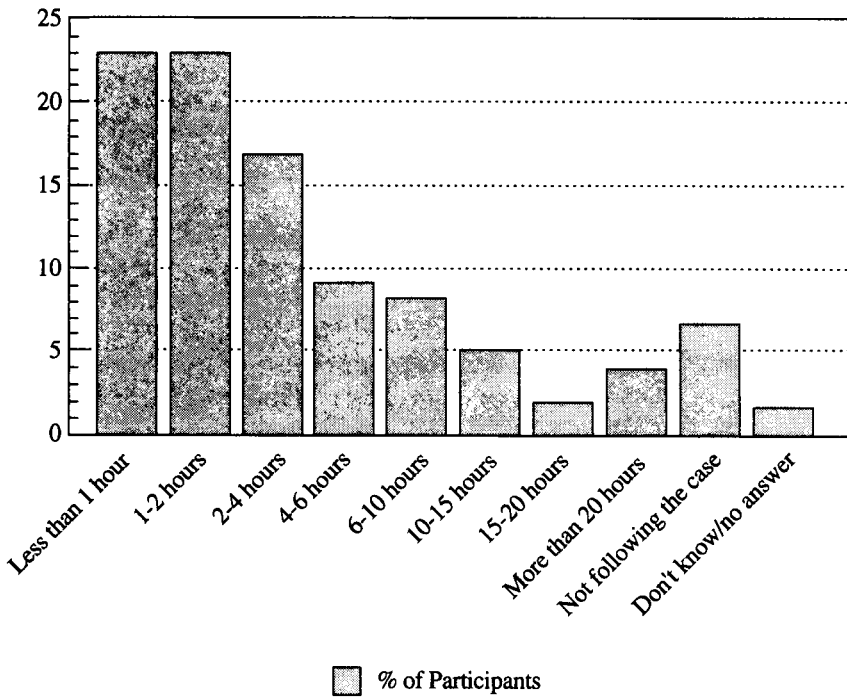
Source: CBS Poll October 3, 1995; CNN/USA Today Gallup Poll October 5-7, 1995

FIGURE 14. AVERAGE NUMBER OF HOURS PER WEEK SPENT FOLLOWING NEWS ABOUT THE SIMPSON TRIAL



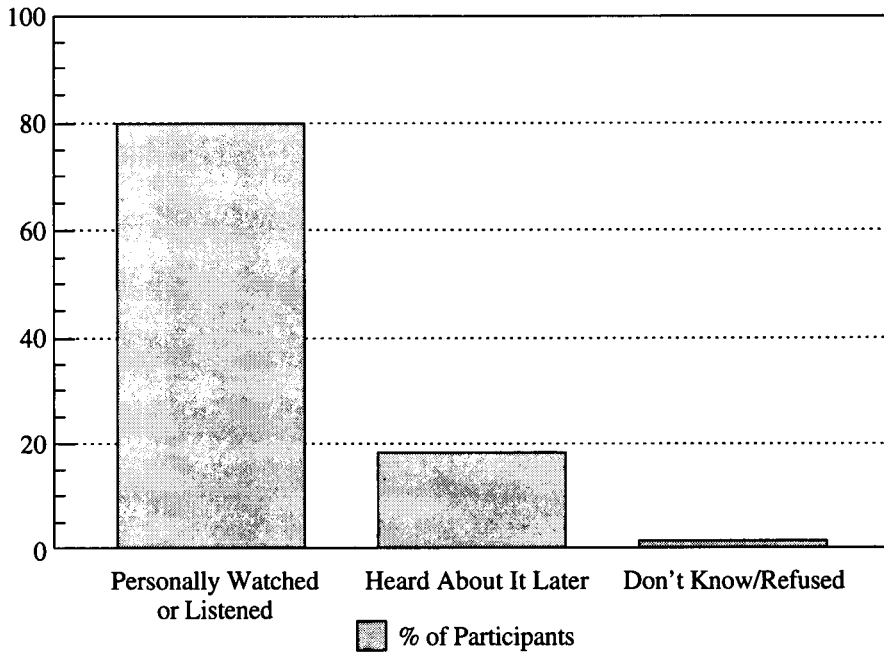
Source: CBS News September 29-October 1, 1995

FIGURE 15. NUMBER OF HOURS IN THE LAST WEEK SPENT FOLLOWING NEWS ABOUT THE SIMPSON TRIAL



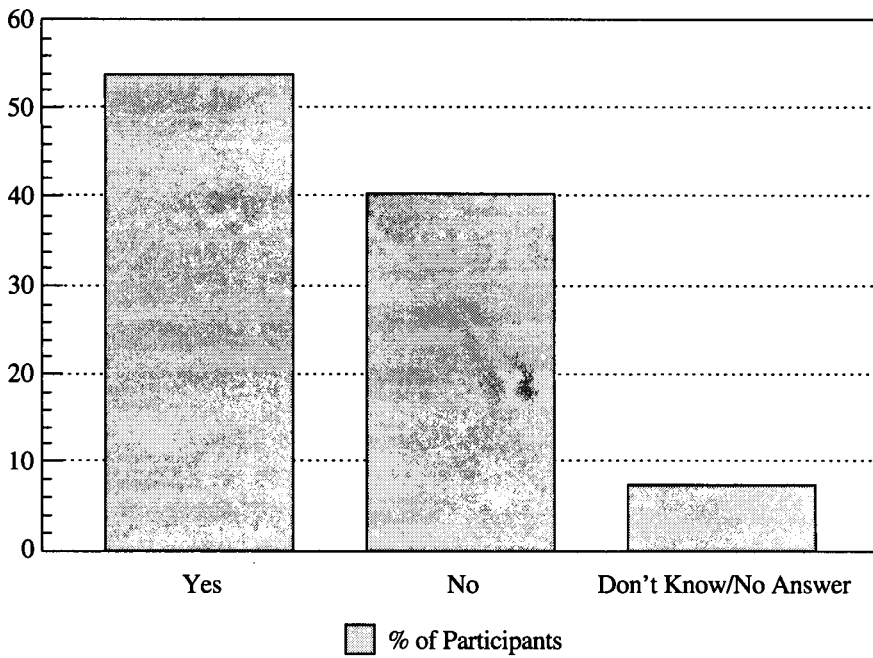
Source: CBS News September 29-October 1, 1995

FIGURE 16. MASS ATTENTION TO THE SIMPSON VERDICT ANNOUNCEMENT



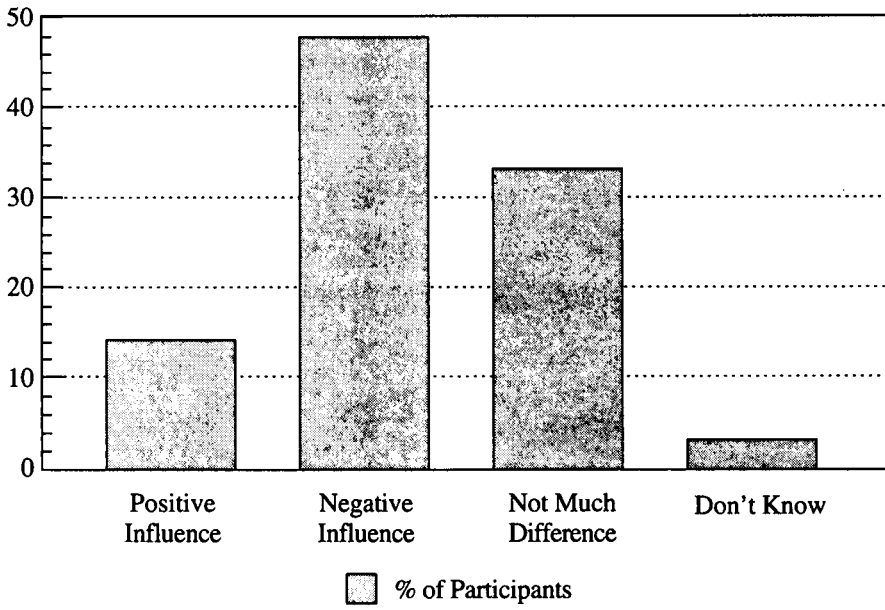
Source: CNN/USA Today Gallup Poll October 3, 1995

FIGURE 17. MASS PERCEPTION THAT TELEVISIONING AFFECTED THE SIMPSON TRIAL



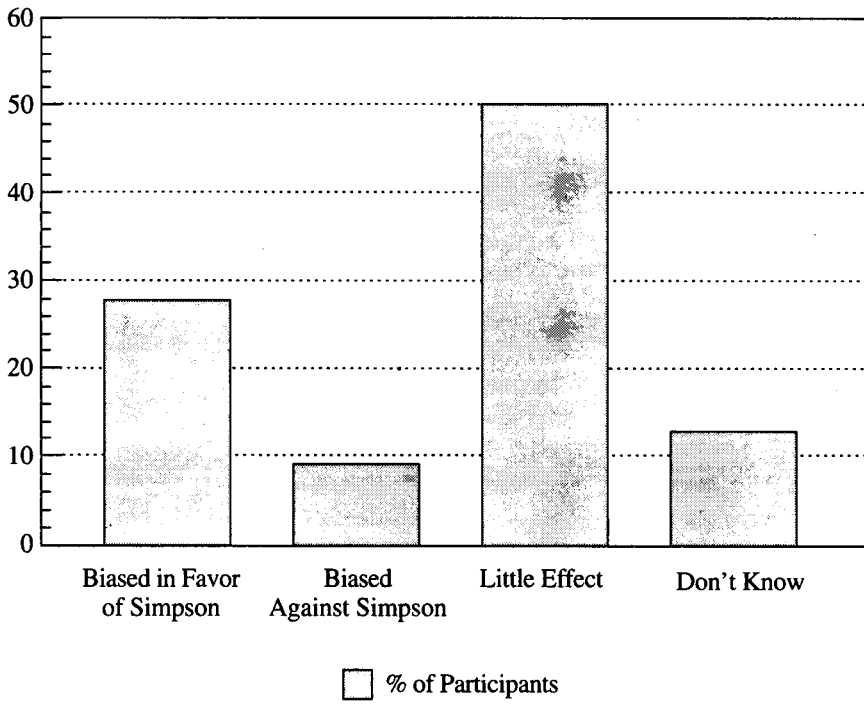
Source: CBS Poll October 3, 1995

FIGURE 18. MASS PERCEPTION ON EFFECT OF TELEVISION'S INFLUENCE ON THE SIMPSON TRIAL



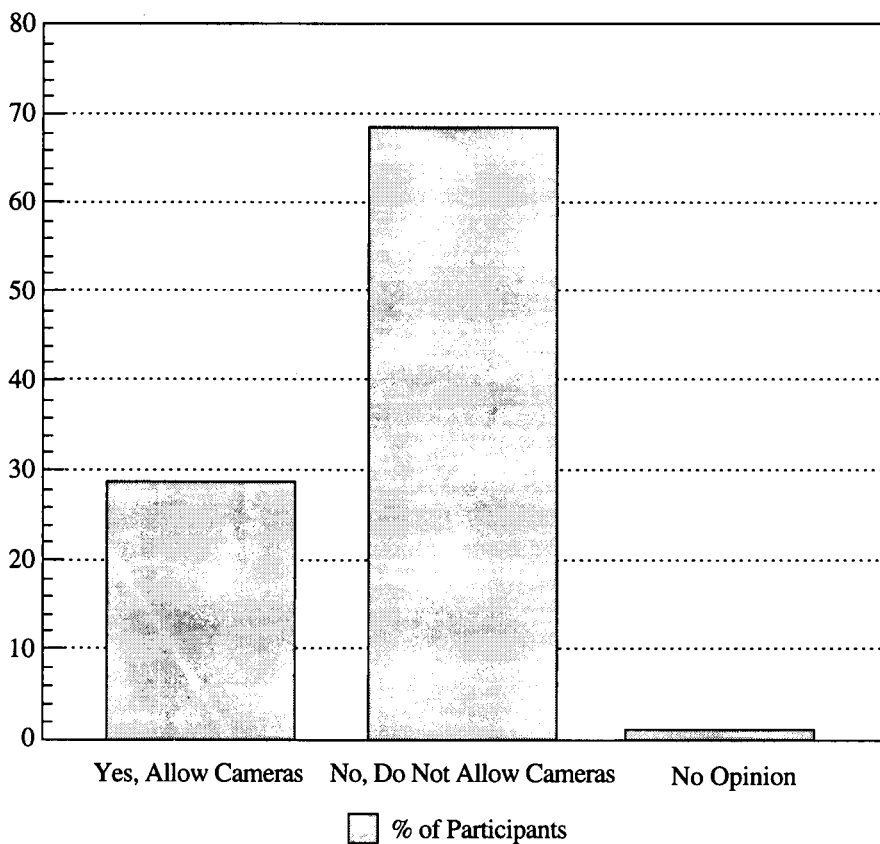
Source: Newsweek Poll October 4-6, 1995

FIGURE 19. MASS PERCEPTION ON WHETHER TELEVISION BIASED THE SIMPSON TRIAL



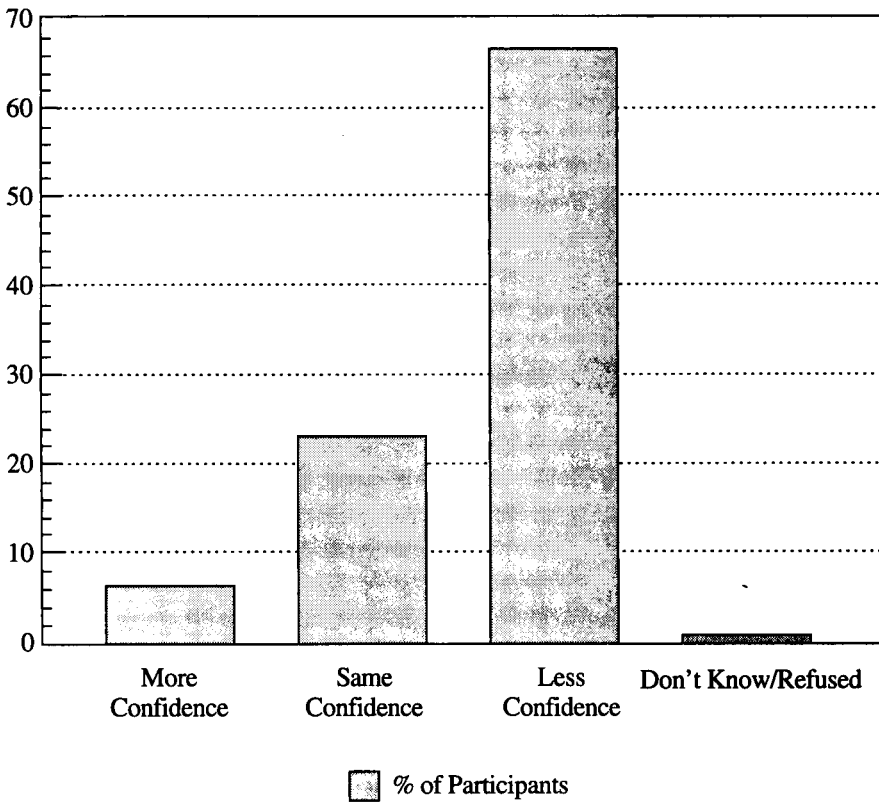
Source: Los Angeles Times Poll October 3, 1995

FIGURE 20. PUBLIC OPINION REGARDING CAMERAS IN THE SIMPSON TRIAL



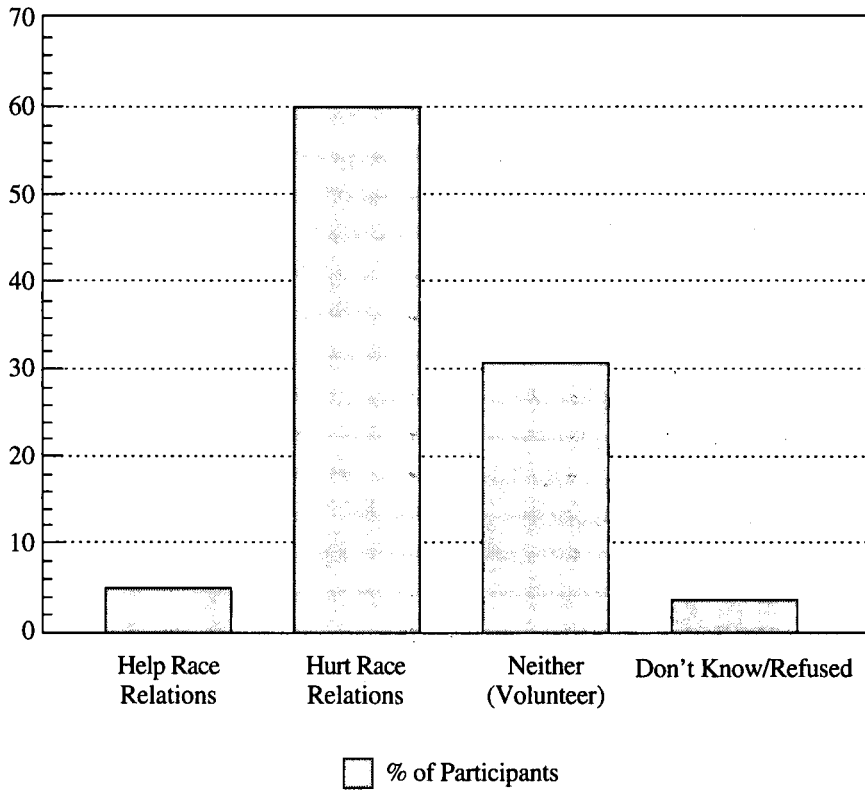
Source: ABC News Poll October 5-9, 1994

FIGURE 21. CONFIDENCE IN CRIMINAL JUSTICE SYSTEM AND MEDIA ATTENTION



Source: CNN/USA Today Gallup Poll June 5-6, 1995

FIGURE 22. MASS PERCEPTION OF EFFECT OF THE SIMPSON TRIAL ON RACE RELATIONS



Source: CNN/USA Today Gallup Poll October 5-7, 1995