

Conrad Murray Trial, Week 1: A Report from the Press Gallery

The first week of the latest Trial of the Century is in the books.

After four days of opening arguments, riveting testimony, and un-ending courthouse entrance-and-exit shots of Janet, Randy, Latoya, Katherine and assorted other Jacksons, what have we learned?

We learned that prosecutor David Walgren will try and prove gross negligence and therefore involuntary manslaughter by showing that Dr. Conrad Murray gave Jackson — and concealed -- improper doses of a milky anesthetic called Propofol. We learned that Murray attorney Ed Chernoff claims Jackson self-administered an array of drugs, including the deadly dose. If convicted, Murray could get four years in prison.

But there may be a more immediate civics-lesson point for us to absorb while the lawyers slug it out. It is this: What legal rules brought the Murray trial into the public's collective living room in the first place? Why was this case televised when so many others are not? And how many cameras are there actually in the courtroom feeding out what appears to be an endless stream of video to a dizzying array of news organizations?

First, a little history.

Since the advent of television in 1948, the courts — particularly the federal courts — have resisted televising trials on the theory that television violated the defendant's rights. U.S. Supreme Court Chief Justice Earl Warren, writing in the landmark *Estes v. Texas* case in 1965, said: "I believe it violates the Sixth Amendment for the federal courts and the Fourteenth Amendment for the state courts to allow criminal trials to be televised to the public at large."

It should be noted that this view by Warren was not the law of the land handed down in *Estes*.

In the main opinion, Justice Thomas Clark drew a clear distinction between print reporters, who he believed had the right to enter the courtroom pen and pad in hand under the First Amendment, and television journalists whose cameras were barred from it under the defendant's Sixth Amendment right to a fair trial.

Justice Clark went on to say quite a few things that have great applicability to the Murray trial. He argued that television cameras are disruptive, while the mere presence of note-taking print reporters is not. He added: "... The News reporter is not permitted to bring his typewriter or printing press. When 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."

In fact what makes the Murray-Michael Jackson case so interesting from a "free-press/fair trial" perspective is that "these arts" were all on display. But scarcely anybody noticed.

A single quiet camera took still images that were shared by print media under a court-sanctioned sharing or "pool" arrangement. Three unobtrusive black boxes took the video and fed it to private media companies who piped it into your office or living room or computer, again, with the blessing of Murray Judge Michael E. Pastor. And the reporters -- who sat in the small courtroom on church-like pews lined with a long light-blue strip of padding -- used small laptops or smart devices to take notes.

Al Seib of The Los Angeles Times was assigned the pool duties of snapping the shots during week one of the trial. Although I sat about 18 inches from the 25-year veteran of the Times for three days, I never heard his camera make a sound.

Seib used something called a “hard blimp,” which completely encased his Cannon Mark IV. When he pointed the 10-inch blimp tube at the action, Janet Jackson, sitting perhaps six inches from his left elbow and curled up in a felt black shawl, did not notice his movements at all.

The whole thing was mounted on an expandable pole that looked like a black pogo stick and his 70-200 mm lens encased within the blimp silently zoomed and turned as Jackson security guard Faheem Muhammad shared a terse exchange with defense lawyer Chernoff on Day 2 of the trial.

Seib says the pooling system ensures that picture-taking is not disruptive.

“I think it’s a wonderful scenario to have, because it removes the ‘spectacle of the camera,’” Seib said during an impromptu interview during the daily 10 a.m. break from testimony on Thursday. “If you have too many cameras it becomes a distraction to all the parties involved. That’s why so many judges are so reluctant to have them.”

In fact, if you go to the website of the national Radio Television Digital News Association, you will find a list of every state and its cameras in the courtroom status. See rtnda.org/pages/media_items/cameras-in-the-court-a-state-by-state-guide55.php. After decades of sometimes rancorous disagreement, all states allow televised proceedings of some trial or appellate proceedings under some circumstances, although the federal courts mostly do not. (Although the federal courts are again experimenting with cameras in trials.)

Photographers like Seib, who is from Illinois and has experienced being excluded from the courtroom, scrupulously follows Judge Pastor’s rule barring photos of anything on the public side of the “bar.” That means, in addition to no pictures of jurors, no courtroom pictures of the Jackson family, the public fans, the deputies keeping watch near the public seats of the ninth floor courthouse in the Clara Shortridge Foltz criminal courts building at 210 W. Temple Street in Los Angeles, the same place O.J. Simpson and rapper Snoop Doggy Dogg were tried.

Pastor’s ninth-floor courtroom has four rows on the other side of the lawyers-and-judges “bar,” and seats up to 65 or so people if you squeeze them in tightly. About 25 or 30 members of the press attended the first week. There were also about a dozen or so members of the public, from six to 10 members of the Jackson family, and a handful of deputies and court personnel.

The three video cameras in the Murray trial are all encased in innocuous black boxes. The boxes are wall-mounted, about two-and-a-half feet long, and two feet high. Two of them set sit above the jurors: one over the head of the first juror in the back row and one above the fifth. The third box sits at the very back of the courthouse, pointed at the judge, above the heads of the fourth and final row of benches that house press, public spectators and family members.

Hans Laetz, a longtime television journalist and recent law school graduate, manages the television and radio media who receive the feeds from the black boxes and work each day in what had once been “Camp O.J. (Simpson)” on the 12th Floor of the court building. Among a dizzying array of wires, monitors, phones, microphones, tripods and cameras, up to four dozen journalists mill around as the case ebbs and flows. Periodically, they get up and walk to the spot outside the encampment to do “stand ups” for their stations. The 12th floor is the only place in the courthouse where photography and interviews are normally allowed.

Laetz, a contractor with the Los Angeles-based Radio & Television News Association of Southern California, says coverage of this mega-trial has gone smoothly in large part due to cooperation between the courts, the press and the police.

For example, Laetz asked the TV folks to voluntarily not use tripods on the sidewalk, so that jurors, judges and other court personnel could pass what looks like a madhouse from 7 a.m. until 8:30 a.m. every morning. “We know we have a constitutional right to set up a tripod, but in this case the police are right,” he said. “Somebody could trip and get hurt. So everybody gets a hand-held and you still get the shot.”

And the television reporters are getting their shots.

“I believe in transparency,” said CNN Anchor Don Lemon. “I think that’s what America is all about. Americans should be in on the process,” Lemon said. “Visual media is part of the media. It helps when people see how the process works. Without transparency, there is room to conceal things,” he said.

Ethan Smith, a senior special writer with the Wall Street Journal’s Los Angeles bureau, was in court every day during week one. “We have to be the eyes and ears of the people to keep the process accountable,” Smith said. The television coverage, ironically, keeps the press more accountable. “It turns the mirror back on us and keeps us accountable even as we are keeping the courts accountable,” Smith said.

Each day, I lined up with Smith, Lemon, Seib and dozens of others to wait for deputies to waive us into the courtroom. You were on time, through two security checks, wearing your press badge, or you didn’t get in the courtroom. Court public information officer Mary Hearn, working with her staff and court deputies, ensured that no pictures were taken on the ninth floor, cleared the hallway of press as trial participants walked in each day, and generally kept order.

That’s why if Murray is convicted, his chances of arguing that the press ruined his case appear to be nil, as was the case when disgraced Enron CEO Jeffrey Skilling made that failed argument in a case that reached the Supreme Court in 2010.

Has the argument ever worked? Well, yes.

The seminal example of a defendant successfully arguing that the press violated his Sixth Amendment rights came in the 1966 U.S. Supreme Court case *Sheppard v. Maxwell*. In *Sheppard* the U.S. Supreme Court said that the trial judge and the press allowed a “Roman circus” atmosphere to prevail.

Dr. Sam Shepherd, convicted of killing his pregnant wife, was granted a new trial as a result and eventually walked away a free man. The Shepherd case is widely believed to be the inspiration for the Harrison Ford film “*The Fugitive*.”

But getting back to “these arts” and their evolution, it is remarkable that so many broadcasters—all local Los Angeles television stations, plus AP Broadcast, Reuters, Univision, MetroNetworks, CBS Radio, Fox Radio News, UniSat, CNN/HLN and a host of others—are all able to transmit the trial without creating the same circus atmosphere that soiled *Sheppard v. Maxwell*. They do it with three quiet video cameras and a single coordinator. They do it with cooperation between the courts and the media.

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