

## **Visible Justice: YouTube and the UK Supreme Court**

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### **Abstract:**

The purpose of the article is to undertake a critical examination of a new audiovisual form of judicial communication developed by the UK Supreme Court. An audiovisual recording of the judge delivering a summary of the judgment now accompanies the publication of the full written judgment and a two page “press summary” of the judgment. The summary judgment video is available for viewing on demand and at a distance via The Internet. The article begins by introducing the audiovisual data that makes up the video case study at the centre of this study and outlines the methods used to undertake the subsequent analysis. It is followed by a review of a number of fields of scholarship and debates that the study of these videos engages with: about cameras in courts; transparency and open justice; and news media representations of courts. A consideration of these literatures provides an opportunity to identify and consider how this study helps to make sense of the Court’s video initiative. It also provides an opportunity to consider the contribution that this study can make to those areas of work. An analysis of the case study videos follows, beginning with a consideration of the representations of the court, the judge and judgment that are to be found in those videos. Attention then turns to study the some of the cultural assumptions and institutional factors

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that shape the visibility of judgment that the videos are generating. The paper ends with some reflections and conclusions about the nature of this visibility and the contribution that the summary judgment videos make to “open justice” and the “transparency” of the court; in particular the judiciary and judicial decision-making.

## **Introduction**

In January 2013, the United Kingdom Supreme Court (UKSC)<sup>27</sup> introduced a new audiovisual form of judicial communication. In addition to the publication of the full written judgment and a two page “press summary” of the judgment, each judgment is now also accompanied by a digital video recording. The summary judgment video shows the nominated judge presenting a summary of the judgment in open court. They average between three and seven minutes in length. Each one is generated from audiovisual material that is the official record of the business conducted in the courtrooms.<sup>28</sup> In some respects the summary judgment videos are closely connected to the written texts of the judgment, and the “press summary.” For example the “press summary” based on the judgment is the basic script of the summary of the judgment delivered by the judge in open court. While the recordings of courtroom proceedings have been available on request by the media<sup>29</sup> and other interested parties since the Court opened in 2009, the 2013 initiative changed the way the audiovisual record is used in various ways. The routine production of a video as a standalone Court communication is a form and new practice of visibility (Thompson 2005). The standalone quality of the summary judgment videos means they can be used independent of other modes of written or visual communication, such as the much longer video recordings showing

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<sup>27</sup> Created by the *Constitutional Reform Act 2005* the UK Supreme Court (UKSC) began operating on the 1<sup>st</sup> of October 2009.

<sup>28</sup> The audiovisual recording has replaced the written record of court proceedings (Wilson 2013). The only exception is if the court goes into closed session. See for example *Bank Mellat (Appellant) v. Her Majesty's Treasury (Respondent) (No. 1)* [2013] UKSC 38.

<sup>29</sup> The Court's audiovisual production suite is linked to a news media communications hub nearby.

other courtroom stages of the appeal process.<sup>30</sup> The audio and visual representations that make up the video image supplement the written texts they are closely associated with. The video recording adds gestures, facial expressions, colour, scenery, props, costume and sounds, such as the spoken voice with its accents and changes in intonation, and background noises to the summary judgment as a written text. The videos offer the ability to view the delivery of the summary judgment “on demand” and “at a distance.” Initially this was achieved via YouTube. Since 2015 the videos have also been available via the Court’s website (Communications Office UKSC 2015). The summary judgment video initiative exploits the temporal and spatial qualities of The Internet. Lord Neuberger, President of the UKSC, made reference to the temporality in the following comment about the 2015 developments, “Now justice can be seen to be done at a time which suits you” (Communications Office UKSC 2015). The face-to-face experience of the delivery of the summary judgment has a specific time and is a unique event: judgments are delivered at 10 on Wednesday mornings. Viewing the video of that event has a different temporality; it can be viewed at any time and watched many times. Comments made by Lord Neuberger at the launch of the Court’s YouTube initiative made reference to the spatial dynamics in his expression of a hope that it would engage wider audiences.<sup>31</sup> The face to face experience of the judge delivering a summary of the judgment requires presence in a specific location; in a courtroom in the UKSC building on Parliament Square, London with limited seating capacity. The viewing

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<sup>30</sup>Live streaming of courtroom proceedings began in 2011 through an Internet platform provided by Sky News. The Court’s 2011-12 Annual Report noted that in the first year of the initiative, “...the service has been receiving an average of 25,000 unique users a month” (Supreme Court 2012: 38). This facility was superseded in 2015. Access is now via the Court’s website. Recordings of the courtroom stages of each appeal are now available on demand. Each appeal now has a page that includes these recordings together with the summary judgment video, the full written text of the judgment and the press summary.

<sup>31</sup> In the first year of the operation of the YouTube channel viewing figures were reported as being, “...well over 100,000...” (Supreme Court 2015: 44). While summary judgment videos are numerically dominant the court’s YouTube channel also contains other video material such as “What is the Supreme Court?,” an introduction to the court. This video has the largest number of “views” on the Court’s YouTube channel.

experience made possible by the video and Internet expands the potential audience by allowing remote viewing in multiple locations, including but not limited to the home, a coffee shop, on the street, in the classroom, a lawyer's office and so on, which may or may not be within the Court's jurisdiction.

The purpose of the article is to undertake a critical examination of this visual communication initiative. It begins by introducing the audiovisual data that makes up the video case study at the centre of the essay. This is accompanied by an explanation of the methods used to undertake the subsequent analysis. It is followed by an outline of a number of fields of scholarship and debates that this study engages with: about cameras in courts; transparency and open justice; and news media representations of courts. A consideration of these literatures provides an opportunity to identify and consider how it helps to make sense of the Court's video initiative. It also provides an opportunity to consider the contribution that this study can make to those areas of work. An analysis of the case study videos follows, beginning with a consideration of the representations of the court, the judge and judgment that are to be found in those videos. Attention then turns to study some of the cultural assumptions and institutional factors that shape the visibility of judgment being generated by the videos. The article ends with some reflections and conclusions about the nature of this visibility and the contribution that the summary judgment videos make to "open justice" and the "transparency" of the court; in particular the judiciary and judicial decision-making.

### **The Case Study and Methods Outlined**

The audiovisual images that make up the case study data are "found images;" they already exist and have not been specifically made for this project.<sup>32</sup> The data sample is small; two summary judgment videos. A variety of factors have informed the selection. Both videos are produced by the Court under the Court's *Broadcasting proceedings for The Supreme Court – policy and rules* (Supreme Court n.d.). Both were made available via the Court's YouTube

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<sup>32</sup> An example of research undertaken with made images see Moran (2015a; 2015b).

channel. Other factors shaping the selection include the date and length of the video. One was selected as an example of a video that uses few editorial cuts, a common format of the videos produced at the beginning of the initiative. The other is an example of current practice, which has many more, “cuts.” The selection provides an opportunity to consider two similar but different forms of visibility.

The first video is of the summary judgment delivered in the case of *R. v. Varma*,<sup>33</sup> an appeal dealing with a criminal matter, a sentencing issue, handed down on the 10<sup>th</sup> October 2012.<sup>34</sup> It is one of the earliest videos made available via YouTube. It was uploaded onto that platform in retrospect being a judgment delivered in the legal year of that initiative but prior to the YouTube channel going live.<sup>35</sup> The running time is seven minutes and 22 seconds. It is one of the longer judgment videos. It is an example of a video that has limited editorial cuts: it has four.<sup>36</sup> The video is dominated by one six-minute shot.

The second video is of the summary judgment in *Scott v. Southern Pacific Mortgages Limited*,<sup>37</sup> delivered on the 22<sup>nd</sup> October 2014. It is the first judgment video of the legal year 2014-15, the third year of the Court’s YouTube channel. The appeal relates to a private law matter concerning rights under a mortgage.<sup>38</sup> The judgment video is three minutes and 42 seconds long. It is an example of one of the shorter videos. It is made up of 14 cuts. The longest shot is just over a minute; the majority last for just a few seconds.

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<sup>33</sup>[2012] UKSC 42.

<sup>34</sup> Paterson suggests criminal matters make up 6% of appeals (2013). See also Moran (forthcoming).

<sup>35</sup> It was added to the YouTube channel retrospectively to ensure that all the judgment videos for the legal year in which the channel began operations were available for on demand viewing.

<sup>36</sup> Cuts are made by the audiovisual technicians in consultation with the communications team.

<sup>37</sup> [2014] UKSC 52

<sup>38</sup> The appeal relates to mortgages and the rights of “home owners” whose property is subject to those mortgages. Private law matters make up the largest category of appeals, about 40%.

In part, the method used involves repeated viewings of materials selected from the Court's visual data archive. The limits of the sample size mean that it is not what Rose (2007) describes as a "content analysis" which she explains, "...is based on counting the frequency of certain elements in a clearly defined sample of images and then analyzing those frequencies" (61-62). The goals of this project are both more modest and more ambitious. At best the analysis is an opportunity to provisionally identify content that the videos have in common, and some differences. The project is more ambitious though. In this study "content" includes the editorial cuts, and an identification of the cinematic and televisual "shots," what I call the visual "language" of the videos. The study also goes beyond content analysis as it seeks to identify and examine some of the material factors that shape the visibility being produced through this video initiative (Tinkler 2013). It explores the technological, cultural and institutional factors that generate the visual language of the Court's visibility in the videos.

The "frame" of each shot is the unit of analysis. It provides an opportunity to examine the information on screen, its organization and its limits; what the frame puts out of the picture. It also provides an opportunity to consider the angle or point of view (Bouge 2003) that not only impacts upon what appears within the frame but also upon the viewing experience (Clover 1998). The analysis will also take account of the contribution the movement from frame to frame makes to the production of information in the image. One of the tools used to understand the images are insights drawn from scholarship on the history and contemporary forms of the visual language of cinema and television (Villarejo 2007). These tools help to identify some of what Thompson (2005) calls the "cultural assumptions and frameworks" (36) that shape seeing and understanding. Two other devices that shape the viewing experience are also considered. The first is the written texts that are incorporated into the visual image. The second is the soundtrack accompanying the frames.

There is a second archival dimension to the project. It involves an examination of various texts in order to identify some of the cultural assumptions and institutional frameworks that inform the production

of the summary judgment videos. Some of these are codified in the Court's *Broadcasting proceedings for The Supreme Court – policy and rules*. Others have been identified in a range of other texts and sources including the Court's Annual Reports, Business Plans and Press releases. Last but by no means least, is empirical data. It takes the form of a transcript of an interview with the Court's Communications staff.

### **The Bigger Picture**

The visual nature of the communications initiative and the technology used to produce the visual images being studied in this paper links the summary judgment video initiative to debates about cameras in courts. The primary focus of these debates has been the introduction of cameras in criminal trial courts and not, as here, the use of cameras in the highest courts of appeal.<sup>39</sup> In the criminal trial context anxieties about cameras in courts link their presence with the power of the camera to corrupt and damage some of the courtroom's key players, defendants, victims, witnesses and jury members and thereby undermine the justice process.

Many of these concerns are either not relevant to proceedings in appeal courts, or appear to be more readily subject to management and regulation in that context. For example the appeal process in the UKSC does not involve a jury or witnesses and the parties involved in the appeal are rarely present and if present generally do not take an active part in court proceedings. The judges in general and the one judge nominated to deliver the summary of the judgment are at the centre of the video image. Any concern about the impact of cameras on the judges or the reputation of the Court more generally is managed in a variety of ways. The production and use of the audio visual record of court proceedings must follow the Court's *Broadcasting proceedings for The Supreme Court – policy and rules* (Supreme Court n.d.). Principle two states that the Court will control

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<sup>39</sup> For a useful common law focused cross jurisdictional analysis of these debates and developments see Stepiak (2008).

the making of the audiovisual images.<sup>40</sup> In the UKSC the recording technology and audio visual production facility have been incorporated into the building that houses the court enabling the routine production of audiovisual images (Miele 2010). The production facilities are operated by Court appointed staff and work under the direction of the Court via its Communications Office.<sup>41</sup> Principle four addresses subsequent use of the audiovisual footage by others. It prohibits the use of the recordings in, "... light entertainment programmes; satirical programmes; party political broadcasts and advertising or promotion." Other principles and rules seek to regulate the content of the images. One approach is to set very general parameters. The first principle states that any broadcast must have, "regard to the dignity of the Court." At other times the approach is more specific. Rule four states, "The cameras will be focused on the proceedings of the court and those speaking. There will be no close ups of members of the public sitting in the public areas" (Supreme Court n.d.). The summary judgment videos are an application of this rule. They are dominated by images of the judge who is delivering the summary of the judgment in court. Areas of the court where parties to the appeal who attend the judgment would sit and where the public might be found are off screen.

The study of visual images produced by cameras in appeal court settings has attracted little scholarly attention. So this study makes a contribution to this underdeveloped aspect of cameras in courts scholarship.<sup>42</sup> As a study of Court produced and Court distributed audiovisual images this article adds a new dimension to the small body of work that examines visual images of appeal courts which has only considered visual materials made and distributed via commercial television (Diascro 2008; Slotnik and Segal 1998).

The most enduring rationale for cameras in courts is institutional transparency. One of the things connecting cameras to transparency

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<sup>40</sup>The only qualification to this is principle six, "In exceptional circumstances the Justices may decide that filming is not appropriate – in which case it will cease temporarily. This is entirely at the Justices' discretion" (Supreme Court undated).

<sup>41</sup> The Court employs two audiovisual technicians (Wilson 2013).

<sup>42</sup> It also separates this study out from popular representations of courts on television more generally. Judges are marginal figures in that context. See Black (2005) and Moran (2012a; 2012b)

is the strong link between transparency and visibility, “...transparency refers to the objects or activities made visible...” (Hansen, Christensen and Flyverbom 2015: 118). The camera is a technology closely associated with making objects and activities visible. John Tagg (1998) describes the set of cultural assumptions that connect the camera as a recording device and visibility as taking on the form of, “an existential connection” (1). The visual image produced by the technology of the camera is taken to be co-natural with the object before the camera, its referent. In this scheme of things the visual representation made using a camera has strong associations with truth; that the thing in the image is a reproduction of the reality that which once existed in front of the camera. Thompson (2005) uses the phrase “pure vision” to name this “existential connection” (36). However, the camera is not a mechanical eye that represents all in an unmediated way. It is always a technology of seeing shape by cultural assumptions, frameworks, practices and organisational interests and priorities (Thompson 2005).

The virtues of camera-generated visibility are referred to in the Court’s *Broadcasting proceedings for The Supreme Court – policy and rules* (Supreme Court n.d.). The “key objective” explains that the audiovisual record creates the possibility of making the Court’s proceedings, “...more accessible to the public.” Various News Releases repeat and elaborated upon this. So, the YouTube initiative is described as, “...the Supreme Court's latest initiative to help make its work as accessible as possible” (Communications Office UKSC 2013). The 2015 News Release announcing the Internet developments talked of justice being “seen to be done” “on demand” (Communications Office UKSC 2015). The relation between visibility and access exploits a particular idea of vision as, “a sense of power, or better, a sense which confers a sense of power” (Brigheti 2007: 328); what is seen is, or creates an illusion of being within reach.

The connection between access and seeing justice done is a theme central to what judges (Bingham 2010; Mosenke 2015)<sup>43</sup> and scholars (Resnik 2011) have noted is a long standing preoccupation; open justice. The Chief Justice of Canada Beverly McLachlin (2014) explains:

We insist on open justice so that citizens may know how justice is being rendered. Courts must be open and reasons for judgment public so that the litigants, the media, legal scholars and ultimately the general public may follow, scrutinize and criticize what is done in the name of justice. It is a point of pride that long before transparency became the buzzword of governance, the courts insisted that their proceedings be open to all. (McLachlin 2014: 2)

Her observation is of interest in various ways. First, is the emphasis given to the longstanding connection between courts and open justice. This is reinforced in the dismissive reference to “transparency” as a “buzzword,” just a modern fashion that in the case of the courts addresses a long-standing preoccupation. Second, is the link she makes between “openness” and “governance.” Third is the particular meaning given to governance in this context. Chief Justice Mclaclin’s comments highlight the importance of information, knowledge, truth, as the prerequisites for scrutiny and criticism. This is an example of what Birchall (2011) calls “educative transparency” (9).

Her description of transparency as a contemporary “buzzword” echoes in part research that notes the pervasiveness of “transparency” and its apparently endless rise up the contemporary social and political agenda. But the negative connotations of the term “buzzword” emphasized in McLachlin’s comment, I want to suggest, are prematurely dismissive. It fails to capture an important feature of “transparency” noted by researchers in the field, that “transparency,” “. . . has become, a sign of cultural (as well as moral) authority” (Birchall 2011: 9). Burchall (2011) argues that in a contemporary context doing “transparency” has benefits for the

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<sup>43</sup> The House of Lords decision in *Scott v. Scott* [1913] A.C. 417 is one of the most cited examples of judicial support for open justice.

institution. It accumulates value, “transparency capital” (Birchall 2011: 11), which enhances the institutions legitimacy. “Trust,” “confidence” and “accountability” are the common forms of “transparency capital” and central to its accumulation (Hansen *et al.* 2015: 118).

Hansen and colleagues (2015) argue that one of the effects of the current prominence of transparency is that there is “little consensus around what transparency entails” (Hansen *et al.* 2015: 118). Transparency, they suggest, has no single essence (Hansen *et al.* 2015). This poses particular challenges for research. They argue that “transparency” should be examined with care and that the study of transparency is best pursued by way of the examination of particular “transparency projects” (Hansen *et al.* 2015: 119).<sup>44</sup> More specifically they propose that the study of “transparency projects” should have regard to the particularity of the objects of transparency and the material devices and techniques of transparency in mind (Hansen *et al.* 2015).

This project is undertaken with these suggestions in mind. The paper offers a study of one particular “transparency project.” One of its goals is to examine the material devices and techniques through which the transparency of particular objects, the judge and judgment, is being realized in a particular context. In part the visibility being produced by the videos at the centre of this case study rely upon physical properties;<sup>45</sup> the transparency of the lens and camera as a machine that faithfully records all that passes through the lens. It also examines the role played by the social, cultural practices and conventions, such as camera position and movement, editing, composition, camera angles in the formation of visibility. Following the suggestions of Hansen and colleagues it also explores the role that organisational interests and priorities found in written principles and rule and unwritten sources play in

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<sup>44</sup>Compare Valverde (2010) who examines research connected to another “buzzword,” security.

<sup>45</sup>The use of glass in many late 20<sup>th</sup> and early 21<sup>st</sup> century courthouses as a sign of open justice has attracted the attention of a number of scholars. For example see Marrani (2013) and Mulcahy (2011).

making the visibility that is central to the Court's transparency project (Thompson 2005).

Before leaving the literature on transparency I want to highlight one further aspect of that scholarship; the "transparency paradox." It is a phrase used to highlight sometimes unexpected, contradictory effects of transparency. Judges and legal scholars have noted the operation of "transparency paradoxes" in the context of open courts and cameras in courts. So the high regard for openness/transparency as a fundamental good at the same time acknowledges that it has potentially damaging effects (McLachlin 2014). While every effort should be made to achieve openness, limits may be imposed because it interferes with other, higher, priorities such as doing justice in the particular case. Cameras in courts generate benefits and produce dangers; enhancing justice and undermining it. The transparency they might offer is far from being an unqualified good. A number of transparency paradoxes identified by Hansen and colleagues are of potential significance in the context of this project. One is that greater transparency may produce more information and produce less. The hoped for accumulation of transparency capital with greater openness may lead to a decline: a loss of trust, a loss of respect, a decline in confidence (Hansen *et al.* 2015). Another is that increased visibility may not only sustain existing invisibilities but may generate new invisibilities (Brighenti 2007). Another paradox is the potential of new transparency initiatives not to end secrets but to bring new secrets into being (Strathern 2000). These are matters that will be returned to later in the analysis.

Last but by no means least debates about open justice and the transparency of the courts are closely connected to scholarship on mass media representations of courts and judicial activity in the news. McLachlin's comment about the abiding commitment to "open courts" makes reference to both "media" and "the public." Her comments connect to a commonplace of the research and policies relating to relations between courts, media and public; that journalists and the media more generally play a key role in making courts and judicial activity "open" and accessible to the public. Journalists have a particularly important role in communicating what happens in courts; they are the eyes and ears of the public (Moran

2014a). The reason for this is the public is largely absent from courtrooms (Mulcahy 2011). Journalists and the media make it possible for the many to obtain the information that enables scrutiny and criticism of the few (Mathiesen 1997). But this, Thompson notes (2000), is public scrutiny that takes a very particular form, which he calls, “mediated quasi-interaction” (35). It depends upon media and more specifically the accuracy and objectivity of media reports (Moran 2014b). The interaction between the object of scrutiny and the viewer is “quasi” as interaction takes place at a distance and tends to involve limited or no exchange.<sup>46</sup>

One of the main declared goals of court communication initiatives is to assist journalists to achieve accuracy and objectivity in their reports (Moran 2014b; Moran 2014c). The UKSC’s innovation to provide a “press summary” of every judgment delivered by the judges of the Court, introduced in 2009, has this goal in mind (Moran, forthcoming). The summary judgment videos further supplement the press summary with additional data as outlined above.

But as noted earlier the camera is not a technology of “pure vision.” Seeing is always infused by cultural assumptions and frameworks (Thompson 2005: 36). Prior to considering the insights in existing scholarship on mass media representations of courts that address the impact of cultural assumptions, another insight from that literature needs to be introduced.

Mass media and courts research suggests that the subject of these videos, judgments, is of particular importance in the production of news about the work of courts. There are a number of reasons for this. News is event orientated. It has a preoccupation with immediacy, moments of change, and novelty (Chibnall 1978; Haltom 1998). The judgment is not only an event that punctuates a frequently long and complex justice process; it is an event that has particular significance. Fishman (1980) calls it the ultimate disposition and explains its particular significance for news workers

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<sup>46</sup> The “comment” facility that accompanies videos on YouTube has not be activated for the summary judgment videos. See Moran (forthcoming).

in the following terms. It, "...provides the news worker with a readymade scheme of relevance" (70). This makes it a critical event for reporters for a variety of reasons. It is a moment in a process that is relatively easy to identify. It is the final opportunity to report on a dispute. In addition the ultimate disposition is a moment of relative clarity that distributes and fixes a variety of things: the facts; good and evil; winners and losers; justice and injustice.<sup>47</sup> Research on the representation of courts and the judiciary in the press in England and Wales noted that the majority of news reports were reports about judgments (Moran 2014a). With respect to the press reports in that study that referred to the UKSC, 75% were about the Court's judgments.

What does existing research have to say about the cultural assumptions and frameworks that shape media representations of courts and judges? It is a matter addressed in debates about "news values," a phrase used to denote a set of cultural and institutional "criteria of relevance" that operate in the manufacture of news. Chibnall (1978) argues they are, "...tacitly accepted and implicitly understood..." (13). While accuracy and objectivity are criteria that shape news they are neither the only nor the dominant "news value." In addition to "immediacy" which informs media preoccupations with events such as judgments, other "news values" include: "dramatization" that emphasizes "action," "spectacle," "impact;" "personalisation" which tends to turn social and political issues into "human interest" stories that bring individuals to the fore and give a particular priority to celebrity; "simplification" representing long messy, complex disputes by way of binaries such as winners and losers, the guilty and the innocent, justice done and justice denied (Chibnall 1978: 24-26).

In his study of UKSC communications and news reports about the work of the Court, Cornes (2013) complains that news reports about the work of the court suffer from what he calls, "narrative hijack." It is an emotive phrase that suggests news reports about the Court may have little connection with the substance of the legal issues at the

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<sup>47</sup> Fishman also notes that one of the reasons for reporting them is also that they open a possibility for future reports, for the generation of ideas of continuity of reporting (Fishman 1980).

heart of a judgment. But Cornes fails to offer a cogent explanation of the cultural assumptions and frameworks that lead to this state of affairs. By contrast Moran (2014a) draws upon the “news value” scholarship in his study of news reports of courts and judges in the English and Wales. One of his examples is news reports of the judgment in the UKSC case of *Sugar v. British Broadcasting Corporation (BBC)*.<sup>48</sup> The legal issue at the heart of the appeal is the meaning of the Freedom of Information Act 2000. The BBC comes under that law but not with regard to any issues relating to “journalism, art or literature.” It used that exception to reject an application under the Act for information contained in a report, the Balen Report, reviewing policy and practice about its coverage of Middle East affairs. The case was heard by a five judge panel. All dismissed the appeal brought by Sugar. The judgement is over 30 pages long and contains five judgments. The press summary names the judges involved; outlines the facts; gives the outcome and includes a one page summary of the arguments in the judgment with page references.

None of the press reports name or make reference to any of the judges. None report the reasoning behind the decision or differences between the judges. Instead the news reports turn the judgment into a sensational human-interest story; a heroic “David” versus “Goliath” “battle;” a fight between good and evil. Mr Sugar is “David,” the little man, the ordinary man fighting the good fight to expose bias. The BBC is “Goliath;” an evil mighty, profligate corporation with something to hide. The meaning of the law set down in the judgment and the reasons in support of that conclusion are not so much inaccurately reported but totally missing from the reports. The journalists have used other cultural assumptions and frameworks, “news values” to report the event of the judgment; of justice denied.

This study of the Court’s summary judgments videos connects with these debates about the role of journalists and the nature and impact of “news values” on the production of news in a variety of ways.

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<sup>48</sup> [2012] UKSC 4.

The first principle of the Court's *Broadcasting proceedings for The Supreme Court – policy and rules* states that:

The purpose of allowing the proceedings of The Supreme Court to be broadcast is to give a balanced, fair and accurate account of the proceedings, with the aim of informing viewers about the work of the Court. It should have regard to the dignity of the Court and to its function as a working body. (Supreme Court n.d.: n.p.; see also

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217307/broadcasting-filming-recording-courts.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217307/broadcasting-filming-recording-courts.pdf))

Produced by the Court in accordance with its own principles and rules each summary judgment video is of particular interest as a representation of the Court's view of "a balanced, fair and accurate" representation of the proceedings. As such the case study provides an opportunity to examine what representations of the Court's judgments that purports to be free of journalistic inaccuracies, errors and extraneous preoccupations might look like. It also demands that consideration be given to the cultural assumptions and frameworks and organizational factors that generate these visions of fairness, balance and accuracy. The Internet creates a potential for the Court to have direct access to the public; to fulfill the role of being the eyes and ears of the otherwise absent public.<sup>49</sup> As such they have a potential to be a form of "news" that supersedes the need for journalists.

Drawing on this scholarship the study of the Court's summary judgment video initiative provides an opportunity to add something distinctive to media and courts scholarship. First, it adds a visual dimension to the existing work on news representations of Supreme Courts (Gray 1968; Greenhouse 1996; Sauvageau, Schneiderman and Taras 2006; Bogoch and Holzman-Gazit 2008). In line with the dominant approach to news scholarship, this work neglects the visual aspects of news (Jones and Wardle 2008; Moran 2012a). Second, it opens up a debate about the emerging capacity of the

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<sup>49</sup> Existing research suggests the police have developed this potential much more than the courts. See Johnston and McGovern (2013).

highest courts to make and distribute news rather than to operate as an organisation that depends upon and assists others, news workers, to produce accurate and unbiased news reports (Johnston and McGovern 2013).

### **The Case Study: What Does Visibility Look Like?**

Having provided a snapshot of various fields of scholarship which this project engages, it is time to turn attention to the videos that make up the case study. The first question to be addressed is what does the visibility that is being made in these two videos look like? What is brought into visibility?

### **Summary Judgment Video *R. v. Varma***

The seven-minute video of the delivery of the summary of the judgment in the case of *R. v. Varma* is made up of three different types of shot; (A) title shot (opening and closing), (B) establishing shot, (C) medium close up. Through the editing process they are combined in the seven minute video in the following manner; A/B/C/B/A. The medium close-up lasts for six minutes. Together the number of edits, types of shots and the duration of the sequences give the video a particular visual rhythm. In order to understand the image being created by the video the frame of each shot and the relationship between the frames will now be considered.

The opening and closing title shots have much in common. Both include a white circular symbol and use a black background. Also included is a textual prompt adding a sub-title “The Supreme Court” that names the symbol at the centre of the screen. This is followed by another textual prompt, “Judgment” and a date. Both fade in below the name of the Court. A different textual prompt accompanies the repetition of the symbol in the closing shot. This time the lettering spells out the Court’s web address and is accompanied by a copyright symbol. There is no voice or musical accompaniment with these shots. The only sound is silence. The opening title shot runs for six seconds. The closing title lasts for ten seconds. A fade is used to end the opening title sequence: the black screen fades in to the next shot. The transition from penultimate shot

to the closing title also uses a fade. This time the fade is to black, which becomes the black screen of the closing title. This use of fade-in/fade-out follows a well-established cinematic convention. It is a type of edit particularly associated with beginnings and endings (Villarejo 2007).

The image that follows the first editorial cut has a wide angle (Figure 1). It shows a room. Sunlight comes through a window at the top left of the frame of the screen. Two gently curving desks fill the majority of the screen: one facing the other. Papers are neatly organized on the desks. Both desks are populated. One is occupied by a group of five people facing the camera. All are dressed in business attire. The second desk, positioned closer to the plane of the image is cut off at the left by the frame of the screen. Only the backs of the individuals sitting at this desk are visible. A woman stands behind the five who face the camera and to the left of the screen. Behind her, an alcove containing a wooden paneled desk includes another seated figure. The only other person in the frame is



*Figure 1.* This screen grab is of the first establishing shot taken from the summary judgment video for *R. v. Varma*. Note the courtroom cameras visible at the top of the picture placed high in the alcove behind the judges. The title of the case on screen provides a visual prompt to facilitate a particular reading of the location depicted in the screen image as a courtroom. Reproduced with permission.

a man standing by a doorway towards the top right hand corner of the frame. With the exception of an elaborately patterned carpet the room's decoration is plain, mainly white. The frame suggests but cuts off other parts of the room. The shot that follows the title shot has the form of what is called an "establishing shot." It is cinematic format commonly associated with setting the scene where the action that is to follow will take place.

In the first instance there appear to be few visible symbols within the frame of this shot to mark the space as a courtroom or any of the figures within it as judges. For example the Court's symbolic badge (Figure 2), a visible marker that designates the space, is cut off by the edge of the screen's frame. The only figure wearing a robe is at the margins of the frame, standing apart from the others at the top right, in front of a door; the costume is indistinct. This positions him



*Figure 2.* Court 2 showing the position of the court emblem on the wall behind the judges. The carpet of the court also incorporates a stylized representation of the floral composition at the centre of the court's emblem. Two of the court's four cameras are visible in the alcove. (C) Supreme Court. Reproduced with permission.

as a marginal figure. The people at the centre of the picture wear ordinary business clothes.<sup>50</sup>

But it would be wrong to conclude that what lies within the frame does not provide visual information, cues and prompts about the nature of the place being shown. One possible source of information is the carpet visible on the floor of the court. It contains the floral motif at the heart of the symbol that appeared in the opening title. The composition of the shot also offers a number of visual prompts that represent the status of the people within the frame. Their distribution within the frame of the establishing shot and their relation to the camera are examples of this. The judges are at the centre of the image and they face the camera. A textual prompt, a sub-title, adds meaning to the establishing shot. “*R. v. Varma* (Respondent)” together with the case number, fades in at the bottom of the screen and remains for six seconds before fading away.

The soundtrack also offers a number of prompts that help the viewer to make sense of what is on the screen. A female voice announces, “Judgment in the case of Queen against Varma.” Two male voices follow in quick succession. The first says, “Lord Clarke will give judgment.” The second begins, “This is yet another appeal...” The wide-angle composition of the image and the sound quality suggest the sound source is visible on the screen but it also makes it difficult to pinpoint the subject who is speaking. The result is that the voices have a disembodied quality. It is only with the second cut which introduces the third frame that the source is picked out connecting it to a particular individual.

The third shot takes the form of a medium close up (Figure 3). The “close up” is a commonly used framing format that puts a single individual at the centre of the picture.<sup>51</sup> “Medium” distinguishes it from the more common cinematic close up that fills the screen with a face. In this case the medium close up shows the upper part of the body as well as the face. The resulting image is of a man reading

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<sup>50</sup> The judges of the Supreme Court do not follow judicial convention by wearing distinctive clothing in court. They do have ceremonial robes but these are not worn in carrying out the day to day business of the Court.

<sup>51</sup> It is not a mode of framing unique to the making of moving images. It is widely used in portraiture. For its use in judicial contexts see Moran (2009).



*Figure 3.* A screen grab of the medium close up taken from the *R. v. Varma* video. It shows the judge, Lord Clarke reading the text of the summary judgment. The shot runs for six of the seven minutes of the video. Reproduced with permission.

from a text on the desk in front of him. In the first few seconds of this sequence a textual prompt appears, “Lord Clarke Justice of the Supreme Court” and quickly fades. The editorial cut, the medium frame and the textual prompt, together, separate out Lord Clarke from his fellow judges, indicate his particular importance and directs the viewers gaze to that subject. The medium close up has a particular depth of focus. The judge appears close to the plane of the screen. The immediate background is relatively indistinct and slightly out of focus. This means that there is little detail in focus to distract the viewer away from the judge.<sup>52</sup>

The accompanying soundtrack has two dimensions. The first is a voice. This is diegetic sound; sound whose source is visible on the screen.<sup>53</sup> Its source is the judge on screen who is shown reading

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<sup>52</sup> One possible exception to this is a headless body cut in half by the edge of the frame whose hands move throughout the six minutes of the medium close up.

<sup>53</sup> For an introduction to the terminology of sound in film and television see <http://filmsound.org/terminology/diegetic.htm>

from a text on the desk. The voice not only supplies the words of the summary of the judgment but supplements this by adding accent, pacing and intonation which provides a wealth of information that potentially adds social, institutional and personal information. The other sound takes the form of background noise, more specifically the rustle of papers that periodically accompanies the judge's voice. The reading judge rarely touches the papers he is reading from which suggests the origin of the rustling sound is out of the frame. But it is not extra-diegetic sound. The preceding establishing shot offers a point of reference to link this off screen sound to the previous shot of the scene of the "action," the courtroom, which includes other judges sitting close to Lord Clarke.

The cut that ends the medium close up sequence reintroduces the wide angle establishing shot. The content of the frame is almost identical to the first establishing shot. This second use of an establishing shot follows a cinematic convention in which this screen format is used to signify an end to the "action." The soundtrack provides an audio cue that helps to make this point. A male voice announces, "The Court will now adjourn." The Justices rise, bow and proceed to leave the courtroom. The order of their departure has a particular pattern: first the judge at the centre of the judicial panel; followed by the judge to his left; followed by the judge to his right and so on. The female figure previously shown behind the judges then follows. All exit via the door situated to the upper left of the frame. As a male member of the court staff closes the door the individuals who have been sitting opposite the judges, back to the camera move; turning to each other. The screen fades to black and the closing title shot emerges out of this blackness.

Before leaving the Varma video another aspect of framing needs to be addressed: the angle of view. Clover's work on cinematic representations of the courtroom (1998) notes that camera angle informs the point of view of visual images, which has two important effects. One is on the diegetic image; what is shown within the frame. The other is its effect on the extra-diegetic experience: the viewers' experience outside the frame.

All the frames have a point of view in common. The angle of the shot always positions the viewer above the floor of the court; above

and looking down not only on the desk where the judges sit but on all those who appear within the frame. The closer the camera appears to be to the subject, as in the medium close up, the more acute the point of view and the higher the position of the viewer. The angle of view of the establishing shot and the medium close up add other dimensions to the viewer's experience of viewing. The first provides the viewer with an experience of relative distance from the judges in the courtroom at the beginning and end of the delivery of the summary of the judgment. The medium close up provides the viewer with an experience of greater proximity; of being close to the judge presenting the summary.

**Summary Judgment Video, *Scott v. Southern Pacific Mortgages Limited and another***

The visual language of the summary judgment video in the case of *Scott v. Southern Pacific Mortgages Limited and another* has much in common with the *R. v. Varma* video. The same title shots fade out and fade in acting as the bookends of the video. The video also makes use of the establishing shot and the medium close up described above. Some of the information within the frame is the same or similar; the courtroom layout, furniture, fittings and the costumes. It also makes use of similar textual and audio prompts and cues.

However, there are also differences. Unlike the *Varma* video that has a total of four cuts in a seven-minute video, the *Scott* video is three minutes and 33 seconds in duration, made up of 14 cuts and 15 shots. In addition to the two title shots (A), and two sequences that use establishing shots (B), there are six sequences that use medium close ups (C). All produce images similar to the ones described above. The remaining five sequences use two "new" shots.

One of the "new shots" (used for three sequences) is a medium range establishing shot (D). Like the establishing shot described above it shows the context in which the "action" takes place. Unlike the other establishing shot it narrows the focus of the action. It shows only the fellow judge(s) who are closest to the speaking judge, who remains at the centre of the picture (Figure 4).



*Figure 4.* A screen grab taken from the Scott video showing the medium establishing shot. Reproduced with permission.

The other “new” shot, used in two sequences, is an over-the-shoulder close up of the speaking judge (E). This close up (Figure 5) differs from the medium close up in two ways. First, it is much more like the traditional close up used in film and television, in which the head and face dominate the screen. But it is far from being a traditional close up in which the full face dominates. Here the judge’s face is in profile. The angle and position of the camera produces a fore-shortened side view of the judge’s head in which only a small part of the side of the face is visible. The rest of the frame is filled with the detail of the speaker’s immediate surroundings and more specifically the surface of the desk the judge sits at and objects on the desk.

The close up’s point of view places the viewer not in front of the subject but to the side and just behind the subject. The acute angle positions the viewer not only close to the judge but high above the judge, slightly behind, looking over the shoulder of the judge. It adds a distinctive point of view, adding a new dimension to the viewer experience.

Together the number of edits, types of shots and the duration of the sequences give the video a visual rhythm that is different from that of the *Varma* video. It takes the following form:



*Figure 5.* A screen grab of the over the shoulder close up from the Scott video. In this case objects on the desk include some of the Justice’s personal property, a small multi-coloured bag. Reproduced with permission.

A/B/C/B/C/D/C/E/C/D/C/E/C/D/A. One of the features of this pattern in a video of three minutes and forty-two seconds is that each segment is of relatively short duration. Medium close ups have the longest duration; up to a minute in length. All the others last for seconds. The other distinctive feature of the *Scott* video is the new proximity between viewer and judge created by the over-the-shoulder close up.

### **Cultural and Institutional Frameworks Making Visibility**

Having examined some of the content and characteristics of the visibility these videos produce, both the things they have in common and the differences, in this section the focus turns to the cultural and institutional frameworks that inform their production. Some consideration has already been given to the the written rules collected in the Court’s *Broadcasting proceedings for The Supreme*

*Court – policy and rules* (Supreme Court n.d.), that set out a number of conditions that inform the visibility being produced in these videos. In this section the impact of the audiovisual infrastructure, and unwritten assumptions, that I am calling the “unwritten rules,” upon the formation of the Court’s visibility will be considered.

### **The Audiovisual Infrastructure: The Technology of Transparency**

Three aspects the Court’s audiovisual infrastructure will be considered. The first is the impact of the incorporation of cameras into the fabric of the UKSC courtrooms. The second focuses on the relationship between the spatial organization of the courtroom and cameras. The third is concerned with the technology used to record the accompanying soundtrack. A study of this infrastructure provides an opportunity to examine the relationship between the technology and transparency paradoxes. What kind of visibility does the Court’s audiovisual infrastructure make possible? What invisibility does it produce?

The way the cameras have been incorporated into the fabric of the courtroom has an impact on the visual images that can be made. The cameras are located high on the walls and in four corners of the courtroom. See figures 1 and 2. As Head of Communications Ben Wilson explained, the options for camera locations were very limited:

The positioning of the cameras was carefully negotiated with English Heritage. It is difficult operating in a 2 star listed building. The camera positions... are fixed and inevitably they are not where you might want them to be if you were a TV producer. (Wilson 2013: 5)

He explained, as a result, “There are only a set number of camera angles that can be created...” (Wilson 2013: 5). One result is that the new visibility the cameras create has built into it certain limits; it creates new invisibilities. For example from their position high on the walls the cameras can produce a range of points of view. As noted above in the analysis of the two videos, the viewer is always

positioned above the courtroom action. Some points of view, eye level, are not possible.

Ben Wilson's comment that, the cameras are not in the position a TV producer would want them to be draws attention to a more general limiting factor. The cameras are not the organizing principle driving the design of the UKSC courtrooms.<sup>54</sup> A different mode of visibility is at work shaping the space of the courtroom; sightlines associated with physical co-presence. As Mulcahy's (2011) study of courthouse design in England and Wales demonstrates one of the central concerns of courtroom design is the position of the judge and the spatial organization of all other participants in relation to this central figure. Sightlines dictate the position of lawyers and the public who are orientated towards the judge. In turn the judge is in a privileged position being always seen and always able to see all in the courtroom. A huge amount of planning goes into realizing this; even minute details are regulated.

In some respects the three courtrooms of the Supreme Court follow the longstanding traditions of court design with the result that the judges are at one end of the courtroom. The sightlines orientate the lawyers, parties to the dispute and public towards the judiciary. But the UKSC courtrooms also adopt a modern trend to downplay this spatial hierarchy. For example the desk the judges occupy in Court 2, the court depicted in the two videos, is not elevated but at the same level as the areas of the courtroom designated for lawyers and the public. The gently curving desks position the judges opposite and in close proximity to the lawyers who represent the clients involved in the appeal. The spatial organization gives priority to the interactions between the judges and the legal representatives. One effect is that people in the public areas of the court have a view of the backs of the lawyers representing the parties which frequently blocks the view of the judges.

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<sup>54</sup> Rituals also dictate where a judge sits on the bench. The most senior judge, defined if not by institutional position then by years of service, sits at the centre. Thereafter the longest next in rank sits to the right, the next to the left, etc. The judge delivering the judgment is not always the most senior judge on the bench.

The camera a technology associated with “mediated quasi-interaction” (Thompson 2000: 35) must fit within a spatial organization dedicated to co-presence, face to face interaction. They are located so as to be unobtrusive if not completely invisible; high on the wall in the four corners of the courtrooms. As a result two of the four cameras are behind and to the side of the judges. These cameras have a potential to make things visible to the viewer that are normally rarely seen in a face to face courtroom encounter. Most of the footage in the two videos studied here is made using the cameras that face the judges. This produces a viewpoint from the body of the court, a visibility akin to a position of the audience sitting in the courtroom. But this camera position actually produces a visibility that, because of the flat floor of the court, is difficult to achieve if sitting in the public areas of the court, such as the back and side of the head of the judge who is delivering the summary of the judgment. The over-the-shoulder close up, a distinctive feature of the *Scott* video is another example of one of the images made possible by this “new” visibility. It gives viewers an experience of proximity to the judge that would be available to very few in a courtroom.

The dominance of images generated by the cameras placed in front of the judges suggests that the visibility being generated by the cameras to the side and behind the judges is missing. If images of the back of a judge’s head are unlikely to be information of profound significance their absence draws attention to the potential of new visibilities to created new invisibilities, and for “secrets” that could now be ended to be kept in place.

The contribution of the microphones to visibility noted in the analysis of the two videos is also shaped by the interface and interaction between the courtroom and recording technology. Microphones used to record the sound are built into the desks occupied by the judges. Their location makes it possible to capture sounds that would be difficult to hear with precision from the public areas of the court. The rustle of papers in the two videos of the case study is a good example of this. At the same time the audiovisual technicians control the operation of the microphones in accordance with the written principles and rules that govern the courts

audiovisual image. Rule 2 of the Court's *Broadcasting proceedings for The Supreme Court – policy and rules* states, "There will be no sound recording or broadcasting of what is said in private discussions of Justices" (Supreme Court n.d.). The rule imposes limits on the audio technology preserving existing silences, secrets.

When the judge speaks during the summary judgment other microphones, on the desk occupied by the lawyers are turned off. Some areas of the court, the space occupied by the public, have no microphones. Unlike when sitting in an actual courtroom in which responses to a judgment from lawyers, parties to the appeal, the public, may be audible, the location and control of the audio recording facilities may introduce new limits, new silences, new secrets about courtroom activities surrounding the delivery of judgments.

### **Unwritten Rules and Principles**

"Unwritten" is used to refer to "criteria of relevance" that are tacitly accepted, implicitly understood rather than explicitly expressed and codified. The example I want to consider here is what I have called, "the just filming rule."

Evidence of its existence is an observation made during the course of an interview with Ben Wilson Head of the Court's Communications Office. Discussion turned to the use of aids, in this case a teleprompter, to assist in the performance of the summary judgment for the camera. He responded to that suggestion in the following way: "...this gets to the nub of it. What is this about? Are we just filming the court proceedings or are we making a piece of television? It is the former. That is the definitive answer" (Wilson 2013: 13).

He continued:

It would be a category error to introduce a teleprompter into a courtroom where often we have lawyers and interested parties.... you would have to place it in the middle of the courtroom [pointing to an establishing shot image on the computer screen to the space between the justices and

lawyers]... [The cameras are] just recording something that is already happening. (Wilson 2013: 13)

He continued:

Teleprompters would take us into a different category where you would start asking questions such as, “Why is there not studio lighting? Why are there not cameras at their actual level?” which would obstruct the court and be very conspicuous. You could just about get a teleprompter in front of the bench without it looking too bad but then you would have them staring in one direction and the cameras would be up there so I’m not actually sure that it would be doing very much. (Wilson 2013: 13)

The essence of the “criteria of relevance” being articulated here lies in the distinction between “just filming” and “just recording” on the one hand and on the other hand, “television.” It is a distinction that suggests the cameras in court produce a very particular kind of visibility. It is a visibility that resists the use of aids and technologies commonly associated with cinematic and televisual forms of visibility; the positioning and manipulation of cameras, lighting and a teleprompter. It is a visibility associated with one particular aspect of technology: the camera. More specifically it emphasizes the exploitation of a camera’s capacity to show something, to bring it into vision. It gives emphasis to putting the Court on show; putting the work of the Court on display.

The six-minute close up that dominates the *R. v. Varma* video is an example of this “criteria of relevance” at work. It is a shot that exploits the capacity of the camera to show the judge as he delivers the summary judgment. It is also a shot that seems to come closest to being a representation of the visibility of the court as “pure vision;” the camera is the eyes of the viewer who is otherwise absent from the courtroom. The stillness of the camera offers an image of the technology as a machine that merely grasps the object before the lens and records its presence.

But as Thompson (2005) notes and the video of the summary judgment in *R. v. Varma* demonstrates, seeing is always shaped by cultural assumptions and frameworks, technological factors and

institutional requirements. The analysis of the *Varma* video above suggests that the distinction between “just filming,” “just recording” and “television” is problematic and not sustainable. Despite its simple structure and narrow visual preoccupations the *Varma* video uses the audiovisual technology in a way that is informed by for example cinematic and televisual devices; in the types of edit and the frames used and the sequencing of the shots. While the courtrooms in the UKSC have not been designed according the principles of making the courtroom space a television studio the incorporation of cameras into courtrooms adapts the courtrooms to function as a television studio.

The conclusion to be drawn is that the “not television” rule is a rule that demands that the court’s visibility be produced by way of a very particular use of visual technology. It is form of screen visibility that seeks to replicate the live performance that takes place in the courtroom (Gunning 1986; Villarejo 2007). The ideal viewing position is akin to that occupied by a hypothetical member of the audience attending a live performance. In the videos considered here the viewer is in a position akin to a gallery in a courtroom. It suggests a visibility that displays minimal signs of its own production. The *Varma* video has many of these characteristics.

## **Reflections**

After the launch of the Court’s YouTube initiative reflecting on the summary judgment videos on that website I and a colleague concluded that the first videos on YouTube, such as *Varma* were unlikely to engage viewers and thereby fail to build a wider audience. The videos, we concluded, offered much evidence in support of a suggestion made by a number of scholars that the work of judges is difficult to represent for a mass audience (Moran 2012b). Spending just over six minutes watching someone dressed in a plain business suit, with their head down reading out loud from a set of papers we concluded, “...is not great telly by any stretch of the imagination.” The analysis of the “just filming rule” above can shed some light on this. It suggests that one key dimension of visibility being represented in the summary judgment videos is the

presence of the camera in Court and the absence of intervention in the images it generates. It is an experience of viewing the mere presence of a camera in a courtroom. It is unlikely to be a captivating viewing experience. It is also a viewing experience that contains a paradox. In part the way that technology is used seeks to convince the viewer that the camera facilitates seeing as nothing more than “pure vision.” Yet the experience of watching the video communicates to the viewer an experience of the camera as a mediating and manipulated technology; anything but “pure vision.”

The video of the summary judgment in *Scott* might be considered to be a more honest fabrication of visibility. Its multiple cuts, multiple frames, more complex structure, and faster pace raise the profile of the various assumptions and practices that shape the visibility that is being produced. If this is the case does this more honest, familiar form of television, a form of television that might be more engaging to viewers who regularly watch visual images on a screen, facilitate the flow of information to an audience or impeded it? Does the visibility found in the *Scott* video enhance the institutions transparency or introduce new limits?

One impact of the cultural and institutional interventions that make the video more watchable, its multiple cuts, different frames, sequential rhythm, direct and manage the viewer’s gaze. The potential is there to limit what is visible, what gets noticed. The shorter duration of all the multiple sequences also reduces the opportunity for spectator contemplation. Both have the potential to limit what a spectator sees and what the viewer scrutinizes.

The long six minute shot in the *R. v. Varma* video provides an extended opportunity for a viewer to contemplate; not only the words spoken but also the hairstyle of the judge, the nervous ticks, the clothing worn, the performance in general, the speakers difficulty with words, the intonations of a regional accent or an accent an audience might associate with the upper middle classes educated in elite educational institutions, the list is not exhaustive. To dismiss the incorporation of this information and its contemplation as of marginal significance or as an irrelevance to justice and the scrutiny of the operation of key office holders in the UK’s highest court, potentially misses an important point; that this

information, missing from other forms of communication about judges delivering judgment, has rich symbolic significance and can communicate much about the judiciary as an institution and the individuals that hold the highest positions in that institution. Any dismissal of its incorporation or significance also offers more evidence of the potential of transparency and openness to be closely associated with a desire to control what counts as being worthy of visibility and what should remain hidden secret and hidden.

If vision, as noted above, is commonly associated with openness and transparency there are numerous examples in the analysis of the case study videos that draw attention to vision's reliance on other senses. Textual and audio prompts help to ensure that the visible is meaningful. The sub-title that comes under the symbol at the centre of the opening title is one example. If the badge is visible without the prompt for many it would remain illegible, undecipherable. The sub-title short-circuits the need for prior knowledge about the meaning of the various parts that make up the sign of the Court. It both reveals the meaning of the sign while maintains its "secret" code; the incorporation of the sign for Libra, the scales of justice, which also doubles as the letter Omega, the final letter of the Greek alphabet, symbolizing the final court of appeal. The stylized representation of the four plants that symbolize the four nations that make up the United Kingdom at the centre of the design, the blue thistle for Scotland, the green and white leek for Wales, red rose for England and blue flax flower for Northern Ireland, might remain "just colours" (Feilden 2010: 158). This is just one example that illustrates the importance of the distinction between visibility and legibility and the importance of the latter.

In the first year of the operation of the Court's YouTube channel viewing figures were reported as being, "...well over 100,000..." (Supreme Court 2015: 44).<sup>55</sup> The viewing figures for the summary judgment videos considered in this study and reported on YouTube

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<sup>55</sup> While summary judgment videos are numerically dominant the Court's YouTube channel also contains other video material such as "What is the Supreme Court?," an introduction to the court. This video has the largest number of "views" on the Court's YouTube channel.

suggest more modest viewing figures. As of July 2015, over three years after the Varma video was uploaded, the number of reported views is 403. The Scott video has attracted 1359 views. A review I undertook of the reported viewing figures for the other summary judgment videos on YouTube for this study indicates that about one third have attracted a 1000 views or more.<sup>56</sup> This is some evidence that the summary judgment initiative can create an audience much larger than would be able to fit in any of the courtrooms; the videos can, albeit so far in limited ways, enhance the openness of courts for a few.

There is reference to the modest goals of wider engagement in the News Release announcing the launch of the YouTube channel. "...[L]aw students, professionals and anyone interested in the outcome of an appeal..." were specifically referred to as the broader audience that the Court hoped to engage (Communications Office UKSC 2013). Evidence of successful engagement with this audience is reported in the Court's Annual Report for 2013-14; positive feedback is reported, "...particularly from law lecturers and legal training providers..." (Supreme Court 2014: 42) This might suggest that this initiative to make the Court more open and more transparent is for an audience that already exists and is already engaged. There is less evidence of an attempt to use these videos to widen the audiences, and more specifically to engage the public as an audience and invite them to scrutinise the work of this court and its judges.

During the course of a lecture by Lord Carnwath, appointed as a Justice of the UKSC in 2012, reflecting on the impact of the creation of the UKSC, commented that, the creation of the Court "...it has brought a new sense of collective identity and with it of collective responsibility" (Carnwath 2013: 4 para. 6). Cornes, in his study of the operation of the first years of the UKSC's communications office suggests that the Court's various communications initiatives have played a role in generating a new institutional self "awakening" (Cornes 2013: 268). Both suggest communication initiatives such as the summary judgment videos may not only offer evidence of judicial image making but also draw attention to another audience

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<sup>56</sup> To date the video of a judgment delivered on the 19<sup>th</sup> March 2014 dealing with the human rights of people with disabilities has attracted the largest number of views: 6,669.

for these images, the judges themselves. Judicial consumption of judicial images may play an important role in creating a new sense of institutional identity associated with this new institution.

The scholarship of Lawrence Baum, *Judges and the audiences* (2006) offers some support for this and draws attention to two important points. Baum argues that elites, such as the judiciary, have a particular preoccupation with their own image. This involves careful image management. The image work that this generates, both image making and image management, has two aspects. Barker describes them as “outward” facing and “self regarding.” The outward dynamic is about making a show of legitimate authority for consumption by wider audiences. Baum suggests that members of the judicial elite work with a narrow understanding of the relevant “wider audiences;” the wider community of legal professionals, and the immediate parties to the dispute. The more important perspective, Baum argues is the “self-regarding” one; the impact of the audience of peers, fellow judges on image making and image management. This perspective is concerned with legitimating their elite position and the power they possess to themselves and their immediate circle (Barker 2001). Baker (2001) calls this “endogenous legitimation” (3): of the self-justification of rulers by the formation and display of their identity as rulers. The open courts and transparency literatures tend to focus most attention on the “outward” dynamic with a wide range of audience in mind. This potentially leaves out of the frame of analysis what may be a more important driver shaping visibility; the “self-regarding” logic.

With these observations in mind the judicial visibility that the videos produce is not only in practice for a narrow range of already engaged “publics” but also for the judges who are the subject of this new visibility. In part this may enable them to engage in new or different forms of self-governance through self reflection prompted by viewing their own image or the expectation that others are viewing their image. In part it may shape further interventions to govern image making and image management; making visible and invisible in other forms. More specifically the videos draw attention to the way in which a particular representation of the camera and its

image making capacity has become incorporated into the judicial self image. It is a sign that potentially generates transparency capital for individual judges and for the judges of the UKSC as a collective.

## **Conclusion**

The summary judgment videos that are at the heart of this study can be characterised as both an innovation and adaptation of a long standing tradition of open justice and a new initiative which is part of a very contemporary surge in activity dedicated to calling institutions and institutional elites to account. The approach adopted in this study has been to undertake an exploration of the visibility that is being created by a particular initiative; to examine the representations of the court and judiciary being produced and to study the cultural assumptions and institutional factors that are producing this particular visibility. The analysis demonstrates that the cameras do not simply open the eyes of viewers who are remote in time and space from the courtroom. The seeing offered by these videos is never, “pure vision.” The visual is accompanied and made visible by the incorporation of audio-visual and textual-visual materials. Cultural and institutional assumptions and frameworks are an essential component of the visibility that is being created through the summary judgment initiative. If, as the court’s *Broadcasting proceedings for The Supreme Court – policy and rules* (Supreme Court n.d.), suggests the visibility being created and circulated via the summary judgment videos is “accurate and objective” then the analysis offered here suggests this a closely regulated form of “accuracy and objectivity” and one generated by the Court with a whole set of assumptions and expectations in mind. This is not to condemn the initiative, as it does offer a new form and new opportunities for visibility. But it is to suggest that the visibility that it creates should itself be subject to rigorous scrutiny and critique. This article is an initiative that seeks to open up debate about new transparency projects in justice settings and to offer an example of how to scrutinise and subject those initiatives to critique.

This video initiative is also an example of a development that creates a capacity in the Courts to communicate more directly with the public. The Court videos are potentially the eyes and ears of an

otherwise absent public. But there is evidence that the Court has more modest aims, seeking to engage what would appear to be already existing audiences. The beneficiaries of the new visibility and greater openness seem to be those who already benefit from the old visibility and established forms of “openness.” The analysis offered above suggests that “new” and potentially more engaging forms of visibility may not necessarily create more openness. Last but by no means least, the analysis of one of the “new” forms of visibility offered here suggests a new paradox associated with this visibility. What may appear to be the least inviting forms of viewing and visibility may be the most valuable.

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