Digital trials, people's attention and the right to a public trial

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Remote Justice: Digital Trials, People's Attention and the Right to a Public Trial

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Abstract. Recent technological advances and changes in social and professional norms prompted by the COVID-19 pandemic have led to a worldwide increase in digital legal trials. Digital trials, also known as online, remote or virtual trials refer to any legal trial hearing where trial participants *and* the individual members of the public participate or attend digitally *and* from physically separate spaces. Digital trials raise an important challenge when it comes to protecting the right to a public trial. In this chapter, we examine whether digital trials are compatible with the right to a public trial. Specifically, we outline a normative conception whereby we argue that right to a public trial protects citizens' interests that trials receive adequate public attention, and rely on this conception to provide a digital ethnographic analysis of the effects that a specific digital trial case – *Cayla Griffin v. Albanese Enterprise, Inc., D/B/A Paradise* (2020) – has on *our* attention as proxy members of the public. Albeit narrow and tentative, our study suggests that, at least in their current form, digital trials undermine the public's attention, and need to be redesigned before they can be legitimately used in jurisdictions where the right to a public trial matters.

***Key-words*:** digital trials, online trials, remote trial hearings, right to a public trial, attention, shared attention, audience effects

Introduction

Significant technological advances and the recent COVID-19 pandemic, among other factors, have led to an exponential increase in the use and frequency of digital trials — also known as online, remote, or virtual trials. Digital trials are now abundant across many jurisdictions.[1] For instance, in response to the lockdown measures during the COVID-19 pandemic, all States in the United States passed bills allowing civil and criminal courts in the United States to implement remote technologies — videoconference platforms, in particular — for conducting trials. Switzerland also followed suit, allowing courts to conduct civil hearings and other judicial proceedings through videoconference platforms (see Ordinance 272.81 "on measures in the judiciary and procedural law in connection with the coronavirus"). While many other European countries —e.g., Austria, Germany, Belgium, France, Spain—had already passed legislation allowing the implementation of remote technologies in judicial

[1] Throughout the chapter, we use the term *digital trial* to refer to trial hearings where trial participants *and* the individual members of the public participate or attend digitally *and* from physically separate spaces. This allows us to distinguish between *digital trials* and hybrid *trials*, where only some of the trial participants or members of the public participate or attend digitally and the rest physically. More generally, we posit that any one trial proceedings can be straightforwardly classified as digital, hybrid or physical.

proceedings (civil, criminal, and of other nature), the pandemic accelerated and normalized the use of digital trials (Sanders, 2020).

Despite their rapid increase, digital trials are not systematically supported by scholars or legal practitioners. Scholarly arguments in favor of digital trials highlight their efficiency in terms of time, money, and other relevant resources, their positive impact on citizens' access to court services, and their potential to improve the transparency of trial procedures, as well as the impartiality of court decisions taken by judges or jurors (Bandes & Feigenson 2020; Susskind 2019; Benforado 2016). Conversely, arguments against digital trials underline their technological limitations and inefficiencies, their negative impact on the defendants' ability to effectively challenge court evidence, to directly confront witnesses or to have their voice adequately heard in court, the risk they pose to eliciting the empathy and attention that judges and jurors need to judge well, and, more broadly, their damaging influence on citizens' trust in the judiciary system (O'Connell 2022; De Vocht 2022; Townend & Magrath 2021; Sevier 2021; Bandes & Feigenson 2020; Bandes & Feigenson 2021). Similarly, survey research shows that legal professionals' perception of and attitude toward digital trials is mixed (Jurva 2021).

One particularly controversial question pertains to whether and, if so, the extent to which digital trials can secure citizens' right to a public trial (hereafter, RPT). Here, too, positions are mixed, with some scholars arguing that digital trials could more robustly protect RPT (Smith 2021), and others contending that it undermines it (Bandes & Feigenson 2020). In this chapter, we aim to conceptually clarify and empirically contribute to this debate about the relationship between digital trials and RPT. Our focus is doubly motivated. First, establishing whether digital trials secure RPT matters for answering the broader and more fundamental question about whether digitalization maintains, amplifies, or undermines the public nature of essential government services. Second, our focus on RPT identifies a distinctive, and largely underexplored position from which citizens can be involved in bureaucratic practice – *viz*., not as policy *co-creators* or *co-producers*, but as policy *co-attendants*.

The analysis we offer here proceeds in two steps. First, we outline a normative conception whereby we argue that RPT protects the citizens' interest that legal trials effectively receive adequate public attention. Second, we rely on this attentional conception of RPT and use non-participant observation methods to provide an ethnographic analysis of the effects that a

specific digital trial case – *Cayla Griffin v. Albanese Enterprise, Inc., D/B/A Paradise* (2020) – has on *our* attention as proxy members of the public. We focus on the *Griffin v. Albanese* (2020) digital trial because, since it is one of the few available *recorded* digital first instance jury trials, it renders our study straightforwardly amenable to future replication attempts.[2]

The chapter is structured as follows. In Section I, we present our attentional view of RPT. In Section II, we bring this view to bear on our digital ethnography study of the *Griffin v. Albanese* (2020) case. In Section III, we draw some theoretical and practical implications that our study suggests for the design and deployment of digital legal trials. Section IV concludes.

The right to a public trial: the attentional view

There is no agreement about whether digital trials can protect RPT. Smith (2021) holds that, if we understand RPT as a right of public attendance whereby trials are heard and seen by the public, digital trials can satisfy the relevant publicity requirements. Specifically, Smith notes that "cameras and microphones may, in fact, be a superior means of making a trial public, by making a proceeding *more* audible and *more* visible" (2021: 120). Conversely, Bandes & Feigenson (2020) consider that digital trials introduce new obstacles to court hearings being heard or seen by the members of the public – for instance, by introducing the risk of connection breakdowns or by not distributing trial access links in a timely manner – and additionally worry that, by moving court proceedings to an online space that is not publicly owned, digital trials "become a part of the ever-increasing privatization of formerly public life and functions which increasingly characterizes our society" (1348-1349).

The disagreement between these two positions cannot be dispelled by the fact that Smith (2021) defends an argument that digital trials can be public in principle – *viz.*, in a technologically ideal context where connectivity and digital access concerns are securely averted, whereas Bandes & Feigenson (2020) argue that digital trials are not public as a matter of actual practice. Rather, these arguments seem to reflect a more general divergence about, as well as an incomplete theorization of RPT. While there is some agreement about the *functions* of public trials – in particular, the fact that they play a central role in overseeing and

[2] There is only one other fully remote jury trial participating in the Remote Civil Jury Trial Pilot Program of Florida that is available online on the CVN for the public to watch; *Mathis v. Argyros* (2020).

contributing to the accountability of the official decision-making processes deployed during court proceedings and in offering ordinary citizens opportunities for public participation and democratic engagement (Jaconelli 2002, 1997; Simonson 2014) – there is no full-fledged view about *what* the right to a public trial is meant to protect (i.e., its substance) or *whose* right it is meant to be (i.e., its structure).

On substance, Simonson (2014) argues that RPT protects "the power that can come from observation itself" (2181), and that it does so by securing the "physical presence of the local audience" (2204) inside the courtroom. This substantive specification is incomplete: even if we accept that the public has the power to observe trial proceedings, it remains unclear how mere observation is connected to the widely accepted oversight and accountability or democratic engagement functions public trials are supposed to secure. Furthermore, this substantive specification fails to capture the sense in which RPT belongs to defendants or plaintiffs, not just to third-party members of the public attending trial hearings.[3] Finally, mere observation based on seeing and hearing cannot straightforwardly account for the underlying contention that public trials are meant to provide members of the public with an opportunity to *actively* participate in trial proceedings, as it is unclear how mere seeing and hearing counts as people acting within or in relation to these proceedings.

On structure, there is no commonly endorsed view about who the primary holders of the right to a public trial are. Sinars (1967) contends that, "since the right is contained among the constitutional safeguards founded for an individual's protection against criminal prosecution, it must be the accused who is to be the primary beneficiary of this right's assurances" (509). Conversely, Trechsel (2006) notes that, because public trials can (and often do) run counter the interests of the defendant, a right to a public trial cannot be construed to be primarily held by defendants. More radically, Jaconelli (1997) suggests that the idea of a public trial cannot ground any coherently defensible right, whether for the defendant or for the public.

For the purposes of this chapter, we posit that disagreements about the structure of RPT are tied to an incomplete or inappropriate specification of its substance. More positively, we

[3] While jurisprudentially more salient for criminal trials, RPT extends to both civil and criminal trials in virtue of ICCPR art. 14.1 that protects an entitlement to "a public hearing". Currently, 173 governments have ratified the ICCPR. The right to a public trial (also formulated in terms of a right to a public hearing) applies equally to civil and common law systems. In Europe, the right is additionally protected *via* article 6 of the ECHR, which protects defendants' right to 'a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'.

contend that RPT protects an interest that defendants and other relevant trial parties (e.g., plaintiffs in civil trials), as well as members of the public and media representatives have in securing the public's *attention* to trial proceedings. This contention purports to answer a substantive question about RPT – *viz.*, *what is the good (or value) elicited by the public's attendance such that this good (or value) should be protected via a specific right?* Our proposed answer here is that attendance is valuable because it elicits attention, and that the *public's* attention is particularly valuable for the legitimacy of legal trials.

Drawing on recent work on the topic, we define attention as "the agent's activity of regulating priority structures, which order the parts of the subject's on-going (occurrent) mental life by their relative priority to the subject" (Watzl 2022: 96). Attention, on this capacious view, pertains to prioritizing a wide variety of mental acts or states (e.g., perceptions, emotions, representations, thoughts), and roughly corresponds to *focusing* on these acts or states. This construal is consistent with authoritative definitions of attention as "the act or state of attending esp. through applying the mind to an object of sense or thought; a condition of readiness for such attention involving esp. a selective narrowing or focusing of consciousness and receptivity" (Tran 2016: 1028). Moreover, the view is both phenomenologically plausible, as it reflects first-person attentional experiences, and empirically well-corroborated (Petersen & Posner 2012; Watzl 2017).

Importantly, the attentional view clarifies the mechanisms behind the legitimizing functions of public trials. First, research on the audience effect (Hamilton & Lind 2016; Tennie et al. 2010; Bond 1982) shows that when task performers face attentive audiences – *viz.*, when they have the experience of being *watched* and *listened to* rather than merely *seen* and *heard* – their task performance is improved. For trial hearings, this suggests that trial actors – *viz.*, judges, jurors, defense lawyers, prosecutors, witnesses, and other relevant court officials – are more likely to perform their tasks well if attentive audiences are present[4], and helps us explain why and how public trials have an oversight and accountability function.

Second, research on the phenomenon of *shared attention* shows that the experience that the members of a group have when they simultaneously pay attention to the same event elicits a feeling of common identity and joint action: it shifts the representation of the attentive subject

[4] For audience effects on judicial behavior, see Romano & Curry 2019, and Garoupa & Ginsbourg 2009.

from a first-person singular to a first-person plural perspective *and*, by so doing, it increases the common knowledge and memory that the members of the group obtain and retain of the said event (Fredriksson 2022; Shteynberg 2018, 2015). For trial hearings, this suggests that attention is democratically desirable – *viz.*, the experience of shared attention that members of the public have when attending trial hearings prompts a sense of collective identity and engagement and helps them build common knowledge and memory about important state practices.

The attentional view also helps specify *who* the right-holders of RPT are.[5] If we accept that attention is the good that RPT is meant to secure, we can argue that individual citizens have a *claim-right* to trials receiving adequate public attention both *qua* members of the public in whose name trials are carried out and *qua* members of the public who are subject to these trials. This claim-right entails a correlative duty that democratic governments have to organize trial hearings such that they can secure public attention *and* a more general, concurrent duty falling on the members of the public to pay attention to these trial hearings. On this understanding, the beneficiaries of the right to a public trial are citizens and those responsible for securing the benefits are the citizens and the state representing them.[6] Furthermore, to the extent that it has a duty to protect RPT, the state also has the power grounded by this duty to decide and enforce particular trial hearings rules and regulations – for instance, rules concerning court access, etiquette or use of the information members of the public might gather while attending trials – geared toward securing attention.[7]

To sum up, the right to a public trial covers claims that citizens have toward their states to ensure that legal trials receive adequate public attention. Albeit schematic, our analysis offers an informative account of RPT and, to the extent that attention levels can be measured and its forms evaluated, it enables us to examine whether different types of trial hearing are consistent with this right. Specifically, it allows us to examine whether and the extent to which digital trials protect the right to a public trial. In the following section, we offer a

[5] The language of claims, duties and powers is used here in the standard Hohfeldian sense (see Hohfeld 1919).
[6] One implication here is that one holds RPT *qua* citizen or member of the public, not *qua* defendants, interested third-parties or members of the press. Thus, while the press plays an important role in informing the public about trial hearings, it does so in virtue of a right that all members of the public have, not because of a special professional right.
[7] Etiquette rules can include limits on the public's attire, prohibitions on using electronic devices or speaking during the hearings or keeping silent during hearings. For a discussion of courtroom etiquette, see Clarke (1991), Howard (2010), and Anderson (1999).

qualitative assessment of the impact that attending a digital trial has on attention. As indicated in the introduction, we do so by applying a digital ethnography method that allows us to experience attention from the public's position.

Case Study: A digital ethnography approach to digital trials in the US

Government measures introduced during the COVID-19 pandemic brought about a major transformation to the United States justice system. Physical courtrooms were closed and, to guarantee continuity in the delivery of judicial services, courts were allowed and, in some cases, mandated to conduct criminal and civil trials through videoconference platforms — *i.e., digital trials*. In Florida, specifically, the steppingstone for the implementation of digital trials was the Remote Civil Jury Trial Pilot Program, ordered by the Supreme Court of Florida upon the recognition of "the need to resume jury proceedings and trials in criminal and civil cases", which had been suspended since March 2020 due to the COVID-19 pandemic).[8] The Pilot Program, initially developed in five Judicial Circuit Courts of Florida, was established to evaluate the viability of conducting digital trials and later establish the requirements for implementing them in criminal and civil cases (*ibid.*).

Within the framework of the Pilot Program, the Fourth Judicial Circuit Court of Florida conducted what is thought to be the United States' first fully remote civil jury trial with a binding verdict: the case of *Cayla Griffin v. Albanese Enterprise, Inc., D/B/A Paradise* (2020). Plaintiff Cayla Griffin filed a complaint for battery against Albanese Enterprise Inc., after two of its employees —bouncers of a strip club owned and operated by the defendant— physically injured her. The defendant did not file a response to the plaintiff's complaint, nor did it appear at any stage during the trial, which ultimately led the trial to a default judgment in favor of the plaintiff. The judge instructed the jury that the defendant was found to be negligent and that the only issue left for them to decide was whether damages should be awarded to the plaintiff. The jury selection and trial hearings were conducted entirely online using the Zoom videoconference platform. The jury selection took place on August 6 and 7, 2020, and was divided into four sessions. The complete jury trial took place on August 10; it

[8] Administrative Order No. AOSC20-31 of the Supreme Court of Florida. The use of videoconference technologies for conducting judicial proceedings is still allowed in several courts across the US. The California Assembly, for instance, has passed bills authorizing the use of remote technologies for conducting criminal and civil proceedings (see bills No. SB-241 and AB-199). More recently, the House of Colorado passed a bill mandating Colorado courts to provide remote access to the public for criminal proceedings.

was divided into two sessions, lasted around 7 hours, and involved the participation of the judge, a special magistrate, court bailiffs, clerks, reporters, the plaintiff and her attorney, a witness, and the jurors. The two hearings —jury selection and trial— were fully broadcasted via the Courtroom View Network (CVN), albeit with a delay (so the jurors' faces could be blurred). [9]

We use the *Griffin v. Albanese* (2020) case to assess and illustrate the impact that the digitalization of trial hearings has on RPT. As indicated in the previous section, we construe RPT in attentional terms. For our analysis of the digital trial, we rely on a digital ethnography method consisting of non-participant observation of the digital jury trial (but not the jury selection). This method consists in a non-intrusive, reflexive observation of the video recordings of the trial and is thus limited to the digital spaces of the CVN and YouTube websites that contain them.[10] As part of our ethnographic work, we report our experience as critical observers —public attendants— of the trial and provide an evaluation based on our experience.[11]

Our digital ethnography approach to analyzing the *Griffin v. Albanese* trial is prompted by three main reasons. First, as a digital ethnographic approach, it allows us to immerse ourselves in an entirely digital environment —*i.e.*, an online video of a digital trial— and experience the trial remotely as did other members of the public audience. This immersion, as stated by Hine, "offers the prospect of developing an embodied knowledge of the setting that goes beyond formal knowledge and verbal accounts of the setting to provide insights into how it feels to live this way of life." (2017, pp. 26). Second, non-participant observation enables us to directly form and reflectively assess our experience as attendants of the digital trail hearings. Third, as our description and reflection show below, a digital ethnography approach offers a direct means for directly assessing our attentional view of RPT rather than relying on other people's testimonies (for a general discussion on digital ethnography methodologies and their advantages, see Hine, 2008; 2015; Ward, 1999).

[9] The hearing is currently accessible on CVN's website (https://pages.cvn.com/duval-county-florida-remote-trial-program) and on YouTube.
[10] For a discussion of different modes of non-participant observation, and a comparison with participant observation, see Ciesielska & Jemielniak (2018), ch. 2 and 3.
[11] Detailed reports with observations from the co-authors on their digital trial experience are available as supplementary materials.

This digital-ethnographic study revealed a series of observations. First, even though the trial was publicly available through online platforms —CVN and YouTube—, the broadcast of the trial was done "on a delayed basis" (see min 1:13 of Part 1 of the trial).[12] The interaction between the public audience and the trial actors, accordingly, was asynchronous and unidirectional. The trial actors were not —and could not be— at any point watched or listened to in real time. Conversely, trial actors could not notice the public viewers at any point — only we, the public audience, were able to watch and listen (with a delay) to the trial actors online. In our experience, this led to perceiving one's presence as redundant or irrelevant to the trial actors and to the development of the trial more generally. Even if the trial were live-streamed, on a delayed basis, we could not have been noticed by the trial actors at any point during the unfolding of the trial. As AP noted in his ethnographic report, "no one is seeing or hearing me – my presence makes no difference to the quality of the hearing/proceedings. I do not matter; my presence does not matter." (see AP report, Appendix 1, note 24). Relatedly, and similar to that of other viewers and listeners, our digital presence remained largely invisible and unrecorded.[13]

A second observation pertains to the individual and isolated nature of the people viewing of the digital trial. The trial hearings were broadcasted online on the CVN and Youtube platforms, and the trial recordings remain available to the public and readily accessible online. Notwithstanding the public availability of the trial hearings, it is plausible that, just as we did, most (if not all) of the viewers attended the trial in private, separate spaces. This individual and isolated mode of viewing, in our experience, became particularly exacerbated by the fact that, on the CVN website the presence of other viewers was imperceptible.[14] The CVN digital space only allowed us to *watch* and *listen* to the videos of the trial. No interaction with or witnessing of other viewers was possible we were unable to see if or how many other people were watching the trial at the same time as we were. As AP reported, "the direct participants of the trial are the visible ones. We are entirely invisible, and there is no indication of our presence on the screen (information about the number of people attending, for example)" (see AP Report, Appendix 1, note 37).

[12] The reason for the delay was that, for security and privacy protection reasons, the jurors' faces had to appear blurred on the screen.

[13] The trial hearings uploaded on Youtube show some traces of the public's presence – specifically, on August 15, 2023, we noted 1 like and 1092 views for the first day of the trial, and 4 likes and 1467 views for the second day of the trial.

[14] As indicated in the previous footnote, the only visible trace of other people attending is the number of registered views and their (like/dislike) reactions to the video recordings.

We noted above that attendance to the *Griffin v. Albanese* likely happened in separate, private spaces. On the one hand, this meant that public attendance was not only individualized and isolated but also susceptible to the influence of the physical environments where attendance took place (*e.g.*, home, office, public transport, etc.). AP, for instance, reported being "interrupted by (his) partner who walks into the room where (he is) watching the video" (see AP report, Appendix 1, note 28). On the other hand, the individualized nature of the viewing also meant that one could attend the digital trial in a comfortable setting of our choosing and at our own pace. JG, for instance, noticed "the ease of attending the trial online as I can stop the video and continue as I please when taking these notes" (see JG report, Appendix 2, note 40). AP similarly noted that the "ease of attendance is quite pleasing" (see AP Report, min Appendix 1, note 25).

The ethnographic research furthermore highlighted significant challenges to sustaining our attention span. Having to continuously stare at a screen, for an extended length of time (around 7 hours), induced a state of weariness and fatigue: during our ethnographic viewing, we struggled with keeping our gaze on the screen showing the hearings and, naturally, with following the content the trial. JG, for instance, noted being "tired of watching the video conference", having "to wear (his) reading lenses to help alleviate the fatigue", and noticing that his "attention has been dropping at times" (see JG report, Appendix 2, notes 22 and 44). AP also noted that "It is very hard to continuously stare/look at the screen, so I find myself averting the screen to get a rest for my eyes – in a court, my gaze would stay within the courtroom (in the space of the court). That cannot happen if I am attending this from home" (see AP Report, Appendix 1, note 19).

A final observation concerns the experience of watching and listening to the digital trial on the different platforms —*i.e.*, CVN and YouTube. Interestingly, there seemed to be some contrasts between those two digital spaces. For instance, on YouTube commercials and visual contaminants appear from time to time during the unfolding of the trial hearing, viewers can comment on the video and interact with others, and one can see the number of people who have watched the trial videos. Despite this, and as indicated, only a couple of digital traces of the public attending the hearings are available.[15] On the CVN website, on the contrary, the

[15] See fn. 13.

only thing capturing your attention is the video of the trial and, as said above, no interaction with other viewers is possible. This difference, in fact, caught AP's attention, who reported that "the experience of the online trial is different according to whether one watches it on the CVN site or on YouTube (more distraction on YouTube)" (see AP Report, Appendix 1, note 18).

Theoretical and practical implications

Our short digital ethnographic study revealed several concerns that are particularly relevant from the perspective of our attentional view of RPT. First, it is unclear whether the asynchronous and unidirectional nature of the relationship between public attendees and trial actors can realize the oversight and accountability functions of RPT. While it is true that scrutiny of trials and trial behavior does not (and perhaps should not) necessarily occur synchronously, it is unclear how delayed and unnoticeable public attendance can lead trial actors to perform well (or simply better) *during* the trial. Arguably, the performance of trial actors is improved by the *real-time* experience of being watched and listened to by an attentive audience — *i.e.*, the audience effect. In *Griffin v. Albanese*, however, the broadcast of the trial was done on a delayed basis, and, more relevantly, the presence of public attendees was not noticeable for trial actors.

A second concern is whether *shared attention* can be effectively guaranteed by digital trials alone. Above, we argued that the attention given by members of a group to the same event at the same time is desirable because of its influence on collective knowledge and memory of that event. Our study, however, revealed that the *Griffin v. Albanese* trial embedded the public's attendance within individualized and isolated spaces. Moreover, the online platform chosen to broadcast the trial —the CVN website— is designed such that any visual or other kind of interaction between viewers is not possible, nor is it possible to see who and how many people are attending the digital trial. It is thus very likely that the isolated and individualized attendance of digital trials hinders the *shared attention* phenomenon.

Finally, our study documents some possible risks to the quality of public attention. While it is true that the online broadcast of digital trials facilitated public access, some of the already-known challenges to sustaining attention arose (for an empirical review of the challenges to attention in the context of digital trials see Sternlight & Robbennolt, 2022). As reported

above, our attention to the digital trial of *Griffin v. Albanese* was affected by the environments in which we were, as well as the physical and mental constraints related to fatigue and tedium.

To the extent that digital trials are here to stay, our remarks above bear practical implications for how policymakers, as well as legal professionals and regulation bodies, should approach the set-up and technical design of trial hearings. First, digital trials should allow direct trial participants – most notably, judges, jurors, prosecutors, defendants, and defense lawyers – to notice whether and, if so, how many members of the public are tuning in for any one trial. This could be done by using attendance status features that both display *and* register how many people are digitally present during a trial hearing. While poor on visual content, such features would nonetheless allow direct participants to experience the public's presence in real-time for any given trial hearing, and to be periodically informed about public attendance rates in general.

Second, attendance features would arguably enable individual members of the public to experience that they are not attending the trial hearing alone and make them aware that their experience is shared by other people as well. Digital trials would then become more suitable spaces for shared attention. Relatedly, officials could consider creating separate online hang-out rooms that would allow members of the public to witness each other's presence and potentially interact during court recess and/or prior to trial hearings.[16] Alternatively, officials could decide to partially de-digitalize trial hearings – for instance, by opening up *physical* public spaces where the public can jointly view such hearings.[17] This would not only address some of the issues raised by the timely distribution of trial access links[18]; it would also side-step some of the shared attention concerns we raised above.

Third, digital trial designers and regulators could explore and test specific technological solutions to ensure that the public's attention is better sustained throughout trial hearings. For

[16] www.gather.town, for instance, is an online platform designed for conducting fully remote events and, importantly, it allows third parties (*e.g.*, public audience) to interact in virtual spaces. This platform offers, in our view, a suitable alternative for incorporating members of the public to digital trials and allowing them to interact with each other. (for a review study on this platform, see Lo & Song, 2023)

[17] This happened in the notorious R. v. Minassian (2021) ONSC 1258 multiple murder and attempted murder case in Canada, where the trial was broadcasted inside special screening rooms made available by the Toronto Metro Convention Centre.

[18] See Bandes & Feigenson (2020).

instance, building on relevant experiments conducted in the context of educational or professional collaboration platforms[19], one could improve attentional engagement by making virtual reality tools available to at least some of the individuals who attend trial hearings digitally. While costly and currently underdeveloped, VR functionalities could go a long way in addressing the abovementioned fatigue and tedium problems. Other ways to address the latter challenges to sustained attention could include, among others, implementing time-appropriate mandatory breaks, reducing offscreen and onscreen stimuli, and ensuring that attendance is done in a comfortable — to the right degree — setting (for possible solutions to screen-induced fatigue and tiredness see, Sternlight & Robbennolt, 2022; Fosslien & West Duffy, 2020).

Finally, and more generally, if systematically archived and straightforwardly accessible, digital trial recordings can be used not only to deepen our scholarly understanding of how trials work and why they matter, but to also support the professional training of legal professionals, and to educate the wider public about an essential public service, most plausibly in cooperation with the media sector.[20]

Conclusion

Digital trials are a new phenomenon and, as such, they remain both normatively and empirically underexamined. In this chapter, we have focused on a specific dimension of digital trials that should be of interest to both legal and public administration scholars – namely, the impact that the digitalization of trial hearings has on the public nature of trial services dispensed in the name of the state and on the protection of RPT. We argued that RPT should be construed in terms of the public's attention to trial hearings, and offered an empirical assessment of the extent to which digital trials protect RPT. Our digital ethnographical study suggests that, *in their current technological form*, digital trials might overall undermine the public's attention and are thus inconsistent with RPT.

[19] For an analysis of the audience's "sense of being there" as a result of VR technology use, see Chessa & Solari (2021).
[20] For a discussion of how the media can use court recordings for the legal education of the public, see Stepaniak (2003).

Digitalization, it has been argued, has the potential to amplify the public nature of trials — and possibly other public services[21]. Digitalization is a promising avenue for facilitating access to court services for a wider number of citizens in a more efficient manner, thus contributing to the oversight and accountability of the actors involved. Nevertheless, as our digital ethnography documents, digitalization in its current form poses a series of challenges to RPT —construed in terms of attention—, potentially undermining the public nature of trials. The challenges have to do, among others, with (1) the asynchronous and unidirectional nature of the interaction between public attendees and trial actors; (2) the individualized and isolated spaces from which public attendance is done; and (3) screen-induced fatigue and tedium, as well as onscreen and environmental stimuli. These challenges need to be addressed when (re)designing digital trials for them to be legitimately used in jurisdictions where RPT matters.

Our analysis is limited in at least three ways. First, the attentional effects of digital trials should be further disentangled and documented by using methods that go beyond digital ethnography, to include surveys, interviews, as well as neurophysiological measures of attention. Second, a more conclusive diagnostic concerning the attentional effects of digital trials requires analyzing *more* digital trial cases across different jurisdictions, areas of law, and legal systems. Given current prohibitions set on the broadcasting and sharing recordings of trial hearings, such data remains drastically limited, but could be partly supplanted by organizing moot digital courts. Third, and finally, the values underlying public trials need to be put on balance with other relevant values – for instance, securing an efficient administration of trial hearings or citizens' timely access to court services – before we conclude whether the use of digital trials should be increased or restricted.

[21] Think, for instance, in budgeting hearings, review committees, administrative inspections, and other public services that allow for citizen attendance and engagement.

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