

## **SENATE HYPOCRISY OVER `HOT' TESTIMONY**

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### **Abstract** (Document Summary)

Rep. James Rogan (R-Calif.), an impeachment trial manager, laments that independent prosecutor Kenneth Starr did not videotape more of the testimony he gathered: "When I was a district attorney I understood there was a big difference between reading to people what the case was about and letting the witnesses come in and tell the jury the story . . ." When asked if the Clinton grand jury videotape was an adequate substitute for live testimony, he continued, "but we don't have videotapes of any other witnesses and so unfortunately, because we cannot call witnesses . . . we're limited to a cold record."

Should the same standard apply to members of Congress? Should political opponents be able to use video--i.e. "hot records"--against members of Congress? Currently, Congress says no. Congressional proceedings are purportedly public, but the only record that an opponent can legally use against an incumbent, unless shown by a government-sanctioned news program, is a cold record. Its rationale is that political opponents might unfairly use video records out of context.

### **Full Text** (700 words)

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One argument in favor of calling witnesses before the Senate is that even though Monica Lewinsky may have already been deposed 22 times neither the Senate nor the public has ever had a chance to see her non-verbal communication.

The 60,000 pages of testimony sent to the Senate suffer from the same communications gap. In Sen. Carl Levin's (D-Mich.) words, "For 500 years, the law has recognized that the way in which a witness offers testimony--the non-verbal cues or demeanor of the witness--is an important element in evaluating credibility."

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opponent can legally use against an incumbent, unless shown by a government-sanctioned news program, is a cold record. Its rationale is that political opponents might unfairly use video records out of context.

The double standard over cold (print) and hot (video) records illustrates how our right-to-know laws have not kept up with current technology: Congress--and other legislatures throughout the country-- have different right-to-know standards for print (the old technology) and video (the new technology). Political opponents can legally quote from the cold version of the Congressional Record, but they violate the law if they show its hot version.

In addition to C-SPAN at the national level, 19 states and more than 3,000 local communities (out of more than 20,000) televise legislative proceedings. Many legislators worry that political opponents could use video records of these proceedings against them. Thus, with rare exceptions such as the state of Oregon, legislators have created clever rules to drastically restrict the use of video records, restrictions that no one would dream of tolerating for print records.

In the U.S. House of Representatives, for example, getting a videotape of House proceedings involves signing a contract that includes the following language: "The use of tape duplication of broadcast coverage of House proceedings for political or commercial purposes is expressly prohibited by the rules of the House of Representatives." The contract adds that any violation of these terms is a criminal offense and that violators must indemnify the Library of Congress for all attorneys' fees necessary for enforcement.

One might think that one could circumvent signing this contract by taping directly off C-SPAN. Wrong. Congress grants C-SPAN a copyright to its coverage. C-SPAN, eager to avoid the wrath of Congress, obliges by copying the congressional contract language prohibiting its broadcasts from being used for political purposes. State legislatures have largely mimicked Congress.

One reason legislators oppose access to video records is that if such records were abused by political opponents, then legislators would limit their statements, thereby skewing legislative deliberation. But it is unclear why this argument does not also apply to print records. After all, no law prevents members of the public from using print public records to advocate a cause or candidate.

Then, too, Congress thinks nothing of using short video clips-- such as Clinton's grand jury testimony--when it suits its own purpose. While the U.S. Congress is in session more than 50 senators per week sometimes request copies of their own Senate floor speeches, mostly to send home to their local TV broadcast outlets.

If Congress allows hot records to be used against outsiders, it should allow outsiders to use them against itself. To do less is hypocrisy. If the public has a right to video records about its government, just as it has a right to print records, then something is seriously amiss.