

A SURVEY OF ATTITUDES OF LAWYERS AND
BROADCAST NEWS EDITORS IN OKLAHOMA
TOWARD ELECTRONIC COVERAGE
OF COURT PROCEEDINGS

By

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PREFACE

This study is concerned with obtaining the attitudes of television broadcast news editors and attorneys (both defense and prosecutors) towards the electronic coverage of courtroom proceedings. The primary objective is to highlight important issues in the controversy as perceived by selected Oklahoma broadcast journalists and attorneys.

I wish to express my deeply felt appreciation to my thesis adviser, Dr. William R. Steng for his excellent guidance and assistance throughout this study and during my time in the undergraduate and graduate programs.

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An anonymous note of thanks is offered to the 59 respondents who freely gave of their time to participate in this study.

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CHAPTER I

INTRODUCTION

The term "electronic news gathering devices" and "electronic media" means the use of television film and video cameras, still photography cameras, tape recording devices, microphones, and radio broadcast equipment.

It is this equipment which traditionally has been banned from courtrooms as early as 1917. The Illinois supreme court in a 1917 decision advised state and other courts against permitting the use of still or newsreel photography in their courtrooms.¹

By 1937, virtually every federal and state court had banned coverage of proceedings with electronic news gathering devices.²

Since virtually all judicial debate has centered around the use of cameras in the courtroom rather than radio broadcast pickup, many sources, like the U.S. Supreme Court in *Estes V. Texas*, discuss the ban on electronic news-gathering devices in terms of "The camera ban", "camera in court", "television in courts", "courtroom cameras", "camera coverage", while at the same time including radio.³ The use of such terms in this paper should be understood to include all electronic newsgathering devices.

Though Canon 35, now known as Canon 3A (7), of the American Bar Association's (ABA's) Code of Judicial Ethics remains, the number of states permitting electronic coverage of judicial proceedings has been increasing. As of the end of 1978, there were approximately 20 states allowing electronic equipment and cameras in their courtrooms.⁴

By 1982, the Radio/Television News Directors Association counts 38 states that allow televised or electronic news coverage of courtroom proceedings on either a permanent or experimental basis, though often under severe restriction.⁵ (See Appendix C for chart showing State-by-State Summary of Court Rules or Statutes Allowing Broadcast Coverage of Court Proceedings). This study reviews the status of cameras in courts before 1935, traces the steps after Canon 35, focusing on issues, conflicts, and developments surrounding use of cameras in the courts, and reviews cases representative of the conflict.

Freedom of expression is the continuation and practical manifestation of freedom of thought. It is one of the most fundamental human rights. The media contend it should not be denied nor trampled upon. In the United State press freedom is woven into the social and political fabric and continues to be one of the mainsprings of its democracy. The founding fathers incorporated the right to a free media into the Constitution.

The First Amendment says that: Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press;

or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.⁶

Justice Hugo Black in *Bridges V. California* in 1941 wrote, "Free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them."⁷ Merrill, Bryon, and Alisky in a study of 86 national constitutions found that the principle of such freedom is set forth more or less explicitly in every social covenant, regardless of the political system it establishes.⁸ Nevertheless, throughout the world, regardless of what type of media system a country may accept, the right to publish and to broadcast the truth is either denied or under constant attack. The complex nature of gathering, publishing, and disseminating news is such that the media is constantly brought into conflict with the government or the Law of the Land. In addition, because of the pervasive role of government in determining the destinies of men, the media is increasingly dependent on government for a major portion of its news.⁹

Trial by jury has been the norm since the time of the colonists and has been affirmed in the Fifth and Sixth Amendments. The due process clause of the Fifth Amendment requires that care be taken in all federal courts to preserve the rudiments of fair play in trial procedures.

The Sixth amendment guarantees that: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by Law, and

to be informed of the nature and the cause of the accusation: to be confronted with the witnesses against him: to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.¹⁰

Former U.S. Supreme Court Justice Owen J. Roberts described the aims and effects of the Sixth Amendment: "It is not that a just result shall have been obtained, but that the result, whatever it be, shall be reached in a fair way".¹¹

History has shown that the rights to a free media and fair trial have been in perennial conflict. This sometimes has wrecked the chances of a fair trial or an impartial verdict by the jury. The media dissemination of inflammatory details and biased reports about the suspect before he is brought to trial, can overwhelm and destroy an individual's right to a fair trial.

Typical examples are statements by over zealous or publicity-seeking officials as to alleged confessions and incriminating evidence which in effect make the case "open and shut." Such information receives intensive and pervasive publicity when there is widespread interest in the crime or in the identity of the victims or the accused. The conflict dates as far back as 1878 to a case in the State of Utah. A defendant petitioned the United States Supreme Court to reverse his bigamy conviction because the judge seated jurors who admitted they had read about the case. At the present time the problem has been complicated by radio and television, with the latter occupying a place of

unprecedented influence in the homes of most citizens.

Lewis Powell, a Supreme Court Justice, wrote:

There can be no doubt that the intense pretrial publicity which modern technology makes possible can be gravely prejudicial. The impact of these news media and the power for good or evil which those who control them possess would have astounded the Framers of our constitution, who lived in a world of hand press and limited literacy.¹²

History: The Story Behind the Adoption of the Ban on Courtroom Cameras

The use of modern electronic news gathering equipment like microphones, radio, tape recorders, still cameras and television in courtroom proceedings has been attacked constantly by some judges and local bar associations as a threat to the decorum and dignity of the court. Decisions prohibiting its use were made as early as 1917.¹³ The Illinois Supreme Court took the opportunity in a 1917 decision to advise state courts against permitting still or newsreel photography.¹⁴

After World War I, news photography blossomed from the stimulus of a growing number of tabloid newspapers, and by the mid 1920's, courtroom photographs had become a regular feature of most daily news, especially the New York Daily News, a pace setter among the picture-laden tabloids.¹⁵ Lawyers and journalists who gathered to discuss mutual professional problems in the 1920's often put cameras in court at the top of their list. For example, when the Chicago Bar Association tackled free press-fair trial

problems the first palliative recommendation made by its Committee on Relations of the Press to Judicial Proceedings was the exclusion of cameras from the court.¹⁶ However, this did not stop full media coverage of the Loeb-Leopold murder trial in 1924 and the Scopes evolution trials in 1925 which were recorded and broadcast over the radio.¹⁷

In 1925, at the urging of the Chicago Bar Association, 46 judges voted unanimously to prohibit photography in and around the courtroom during and when proceedings were pending.¹⁸ But the rules limiting courtroom photography virtually failed because they were not uniformly imposed. Competition among newspapers impelled all to attempt to take trial pictures. Likewise, judges found it difficult to uphold the prohibition when their colleagues allowed unlimited picture taking.¹⁹ The media, in total rejection of the rules, argued that it was beyond the judiciary's boundary to determine what should be printed and how it should be done. The media contended the ban also would impede coverage of the entire legal system.²⁰

The American Judicature Society, which represented the sentiments of most judges and lawyers, dismissed the press objections to the Chicago rule:

We submit that such pictures are no part of genuine judicial publicity. They tell nothing of the trial whatsoever. They merely flatter certain officials and individuals or cater to a morbid and moron interest in sensational crime.²¹

The first ruling banning cameras in courtrooms was handed down in 1927 by Judge Eugene O'Dunne against Hearst's

Baltimore News and the morning American.²² Judge O'Dunne, presiding at a murder trial, caught a news photographer, William Klemm, taking pictures of the defendant being locked in the courthouse jail. The judge decided to prohibit photography in the courtroom and its precincts.²³

But a city editor who knew of the order instructed another News photographer, William Strum, to take pictures which later were published in the evening News and the morning American.²⁴ Judge O'Dunne began contempt proceedings against the two photographers, the city editor of the News and the managing editors of both newspapers.²⁵ The managing editor of the News admitted the pictures were taken in violation of the court order but contended the court had no right to forbid the taking of pictures in the court.²⁶ In effect, the Hearst papers acknowledged the judge's authority to stipulate the conditions under which photographs could be taken, but asserted that he could not prohibit photography entirely.

The Maryland Court of Appeals ruled the publishers had flouted a direct judicial order and that a presiding judge could regulate and even prohibit disruptive conduct for the two-fold purpose of protecting the rights of the defendant (who was in custody of the court) and preserving the dignity of judicial proceedings.²⁷ The Hearst newspapers lost their appeal of the contempt citation and paid a \$5,000 fine. The five editors and the photographers were sentenced to one day in jail.²⁸ Once Judge O'Dunne's prohibition was

affirmed, other judges issued "standing orders barring newspaper photographers" from court proceedings. This was fully supported and endorsed by members of the bar.²⁹

Before Canon 35 came into existence, the essence and the importance of news photography was a reality to publishers who had to stay at the top of the market. This created a dilemma for photojournalists covering court proceedings. They were faced with a patchwork of differing judicial stances. Jurisdictions such as Chicago prohibited all photographic coverage of court proceedings; in some jurisdictions instructions were tailored to particular cases and in other jurisdictions judges welcomed photographic coverage of the courts with few reservations.³⁰ A typical example was a judge in a 1931 murder trial who dismissed a juror's complaint that picture taking interfered with his concentration saying, "The safety of the administration of the criminal law is publicity."³¹

In a 1933 kidnapping trial in Oklahoma City a judge who permitted photographers and cameras into his courtroom said:

We are living in an age of pictures when people get their information from seeing as much as reading The courts belong to the people. Only a few of them can get inside the courtroom and the constitution says our trials shall be open and above board for all.³²

Discussions of the free press-fair trial problems led to the creation in 1924 of the American Bar Association (ABA) Committee on Cooperation between the Press and the Bar.³³

The ABA committee helped establish local press-bar panels and tried to promote a better relationship between the press and members of the bar.³⁴

The peaceful relationship remained until the tumultuous trial of Bruno Richard Hauptmann in 1935. This led the ABA to impose upon the media the Canons of Professional and Jusicial Ethics, including Canon 35.³⁵

Although there were indications that members of the ABA expressed concern about effects of still cameras in the courtrooms as early as 1932 they did not study the problem until after the Hauptmann trial.³⁶

"The Lindberg Case" and trial of "Bruno Hauptmann" refer to the kidnaping in 1932 of the 19-month-old son of the famous aviator who made the first solo crossing of the Atlantic.³⁷ Intense photographic coverage of the kidnaping began immediately after Charles A. Lindberg reported the disappearance of his son. Shortly thereafter the body of Charles Jr. was found in a shallow grave near the Lindberg home.³⁸ As police investigated the kidnaping-murder during the next two years the press, especially photographers, hounded Lindberg and his wife.³⁹

On September 1934, Bruno Richard Hauptmann, a German immigrant, was arrested for the crime. His subsequent trial which started in January 1935 attracted more than 700 writers and broadcasters and 132 still and newsreel cameramen.⁴⁰ Despite the keen competition among the journalists and considering the clamor for photographs there were few

breaches of the cameramen's agreement with presiding judge Thomas W. Trenchard. A justice of the State Supreme Court who initially had considered closing the court to cameras, he changed his mind after conferring with representative of the photographers and decided only four cameramen would be allowed inside the courtroom "to take pictures at vantage points three times each court day; immediately before the 10 a.m. convening, during noon recess, and after court adjourned in the afternoon."⁴¹ Newsreel photographers who were not included in the judge's order applied for permission to cover the trial, claiming that their right of access was equal to that of still photographers and reporters.⁴² Judge Trenchard granted permission after the newsreel crew demonstrated its muffled noiseless camera and unobtrusive lighting equipment. The judge consented to placing a silent camera on the floor of the courtroom, a sound camera in the balcony and another in the library adjacent to the courtroom - with orders that no filming would be permitted when the judge was seated on the bench.⁴³ There were few violations of the judge's orders by the camera crews but on February 4, Judge Trenchard withdrew permission for all photographic coverage in the courtroom when he learned that the sound camera had been operating for several days while court was in session. The camera had been so well soundproofed that the judge and public learned of the filming only when some of the footage was released.⁴⁴

New Jersey Attorney General David Wilentz, the chief prosecutor, demanded that the five newsreel companies not show the trial footage.⁴⁵ Fox Movietone News and Paramount withdrew their reels from distribution in New York and New Jersey, but Pathe and Universal refused to comply.⁴⁶ Much of the publicity in the Hauptmann trial was prejudicial, but mainly the damage was primarily not done by the use of cameras in the proceedings but by lawyers and reporters who issued statements that were clearly inflammatory, such as Hauptmann being described in the press as a "thing lacking in human characteristics."⁴⁷ Some articles condemned Hauptmann as an "Immigrant Nazi Killer", while others were faulted for invasion of privacy, printing rumors convicting Hauptmann.⁴⁸ Grievances about news photographers were minor in comparison to the bill of particulars drawn up against the print journalists. Besides the violations of the judge's orders, photographers were criticized for their bad taste in taking pictures during recesses in which placards marked the seats occupied by principal trial figures and when photographers doggedly pursued witnesses outside the courtroom.⁴⁹

The attorneys' performances during the trial also was criticized. They were condemned for their out-of-court statements and their deliberately planned propaganda used purely for the purpose of personal publicity.⁵⁰

Editor and Publisher concluded in one of its editorials that reform "must be one of mind and heart in the legal

profession. When the law again respects itself it will compel the respect of others".⁵¹ Prominent attorneys also voiced their disapproval of the lawyers' actions at the trial. Harold R. Medina, associate professor of law at Columbia University, articulated the sentiments of many editors:

I do not blame the newspaper reporters and the photographers for getting whatever news and whatever pictures they can. I do blame the lawyers for the statements they make to the reporters and for the deliberately planned propaganda purely for the purpose of personal publicity which pollutes the administration of justice and discredits the bar as a whole.⁵²

The Hauptmann trial prompted many states to seek solutions to the problem of trial publicity which was believed to be the work of the media. Legislation was introduced in some states prohibiting all forms of electronic devices from the courtroom and its vicinity.⁵³

In Maryland it was decided to "outlaw the making of sound pictures at a court session during trial and to prohibit showings of such pictures made in any other states".⁵⁴

Succumbing to pressures from the local bar association, attorneys, and others, Los Angeles killed promising experimental broadcast of traffic court proceedings. "I still think broadcasting would be alright but there is too much opposition," said California District Court Judge Joseph Call.⁵⁵

The Judicial Council of New York, a group which studied reforms in court procedure for the state legislature,

drafted a rule barring all photography and broadcasting in court.⁵⁶

The New York Daily News argued that written and pictorial journalism were too much alike to justify an inferior constitutional status for photographers. It stated

Some may contend that there is something more 'sensational' in the pictorial method than the other; but this shaft of criticism arises from habits of thought -- the abhorrence which many minds display for whatever is novel -- rather than from any application of sound criticism.⁵⁷

Members of the ABA decided to act before the momentum generated by the Hauptmann trial subsided. Its president William L. Ransom formed the special committee on cooperation between the Press, Radio and Bar against publicity interfering with Fair Trials in Judicial and Quasi-Judicial proceedings.⁵⁸

On the committee were seven representatives from the American Newspaper Publishers Association, five from the American Society of Newspaper Editors and six from the ABA.⁵⁹

At the 1937 ABA convention the committee reported it had reached accord on all matters under consideration except one - cameras and sound equipment in court. It asked the House of Delegates to adopt its six recommendations:

That no use of cameras or photgraphic appliances be permitted in the courtroom, either during the session of the court or otherwise. That no sound registering devices for publicity use be permitted to operate in the courtroom at anytime. That the surreptitious procurement of pictures or sound records be considered contempt of court and be punished as such.⁶⁰

The committee also termed the Hauptmann trial as:

The most spectacular and depressing example of improper publicity and professional misconduct ever presented to the people of the United States in a criminal trial.⁶¹

Canon 35

The House of Delegates accepted the six recommendations and urged the committee to obtain "an agreement of the three groups concerned" on the unresolved question of cameras and recorders in court.⁶² But three days later, September 30, 1937, the committee on Professional Ethics and Grievances proposed additions to the Canons of Professional and Judicial Ethics, including Canon 35 which was in a supplementary report.⁶³ Canon 35 forbade taking of photographs in the courtroom, including both actual court sessions and recesses. It was passed without a reading, or discussion with press members of the special committee nor was any reference made to the mutually exclusive report accepted three days before.⁶⁴

The updated Canon 35 declared that broadcasting or photographing court proceedings:

Detract from the essential dignity of the proceedings, distract the participants and witnesses in giving testimony and create misconceptions with respect thereto in the mind of the public and should not be permitted.⁶⁵

Although it was only a bar association canon, the entire federal judiciary and all state judiciaries, except Colorado and Texas adopted the ban.⁶⁶ In 1952, Canon 35 was amended by the ABA to ban television also.⁶⁷ The wording

was revised in 1963, but the revision did not alter the impact of the Canon, which was adopted by most states and followed in practice by most of the rest.⁶⁸ There was a strong push from newspaper, broadcast, and photography groups for a relaxation of Canon 35 but the ABA remained adamant. The ABA established special committees in 1954 and in 1958 to study Canon 35 but the committees recommended the restriction remain.⁶⁹

Since Texas had not adopted Canon 35, broadcasters were permitted to cover trials like a murder trial in Waco, Texas, on December 6, 1955.⁷⁰ Presiding judge, D. W. Bartlett previously had allowed photographers in the courtroom on the condition they did not disturb the court. Bill Stinson, news editor of KWTX-TV, obtained the judge's consent to bring his television camera into the courtroom under the same restrictions as still cameras.⁷¹

The television camera was mounted on the balcony and the entire trial was telecast live.⁷²

By 1959, Colorado, Oklahoma and Texas had begun to allow full electronic equipment and cameras in their courtrooms while individual judges in at least a dozen other states ignored the canon and were not reprimanded for doing so.⁷³

Developments

Either isolated instances or common practice allowed cameras in the courtrooms of Washington, Arizona, South

Dakota, Mississippi, Connecticut, Pennsylvania, Iowa, Georgia and Nebraska by 1959.⁷⁴

Estes V. Texas (381 U.S. 532, 1965)

"The life or liberty of any individual in this land should not be put in jeopardy because of actions of any news media"⁷⁵ Justice Tom Clark wrote in *Estes V. Texas*. He held that First Amendment protections does not extend rights to the television medium to enter the courtroom.

Even the most liberal of jurists reject the view that the public's right to know entitles the media to broadcast or photograph judicial proceedings. Justice Willima O. Douglas maintains for example that:

Such coverage imperils fair trial because of the insidious influences which it puts to work in the administration of justice. The historic concept of a public trial envisages a small close gathering, not a city-wide, state-wide or nationwide arena. The television camera would place added tension upon witnesses, and such a strained atmosphere would not be conducive to the quiet search for truth. Unimportant miniscules of the whole would be depicted and they would be the sensational moments . . . Judge and Lawyers would be tempted to play to the galleries.⁷⁶

It was in this spirit and setting that the Billie Sol Estes case came to the United States Supreme Court. Estes, a Texas financier, came to trial in 1962 for theft, swindling and embezzlement involving the federal government. Over Estes' objection, the trial judge permitted television, radio, and the print media to cover segments of the trial. The initial pre-trial hearing was carried on in a small courthouse and was broadcast live by radio, and television.

Twelve or more cameramen were engaged in the courtroom and cables, wires, snaked across the floor. Microphones were on the judge's bench and television lights were beamed at the jury box and counsel table.

Video tape recordings fo the trial also were telecast extensively in the regular news programs in the Smith County area. Commentators discussed various parts of the testimony.

Estes was convicted and appealed partly on the grounds that he had been deprived of due process of law by the televising of the trial. But in 1964, the Texas Court of Criminal Appeals found no injury to Estes from the telecasts, and Estes appealed to the High Court.

The Supreme Court's decision came within one vote of barring all television from all courts on constitutional grounds. The court held that, in this case, notorious pretrial publicity, disruptive use of television at a pretrial court hearing and partial televising of the trial itself (all over the defendent's objections) combined to deprive Estes of his constitutional right to a fair trial.⁷⁷

It was in this case that the impact of television on witnesses, jurors, trial judges, and on the defendant was clearly spelled out. Justice Clark listed these as the probable effects:

1. The jury's attentiveness at trial would be affected by the obstructions of television equipment, and the distraction resulting from knowing that televising was being done.
2. The quality of testimony in crimintal trials

would become frightened, cocky and given to overstatement and forgetfulness.

3. The trial judge's undivided attention would be diverted if he had to supervise the telecast; he also would have undesirable reactions to the psychological impact of the presence of television.⁷⁸

Justice Clark pointed out the specific impact of television coverage in the Estes case. The trial judge was harrassed by the presence of television and by the frequent changes he had to make in the nature of the coverage to protect witnesses.

In recounting problems and difficulties faced by the trial judge, Justice Clark wrote:

Plagued by his original error, recurring each day of the trial, his day to day orders made the trial more confusing to the jurors, the participants and the viewers. Indeed it resulted in a public presentation of only the State's side of the case.⁷⁹

Justice Clark had no doubt in his mind as to the prejudicial effects of television.

A defendant on trial for a specific crime is entitled to his day in court, not in a stadium, or a city or a nationwide arena. The heightened public clamor resulting from radio and television coverage will inevitably result in prejudice. Trial by television is, therefore, foreign to our system.⁸⁰

In this context the judge continues, "Truth is the sine qua non of a fair trial. The use of television cannot be said to contribute materially to this objective."⁸¹

Chief Justice Earl Warren, with whom Justice Douglas, and Justice Arthur Goldberg joined, concluded that televising of trials violates the Sixth and Fourteenth

Amendments based on three grounds:

1. The televising of trials diverts the trial from its proper purpose in that it has an inevitable impact on all the trial participants.
2. It gives the public the wrong impression about the purpose of trials, thereby detracting from the dignity of court proceedings and lessening the reliability of trials.
3. It singles out certain defendants and subjects them to trials under prejudicial conditions not experienced by others.⁸²

Justice Warren continued that television can work profound changes in the behavior of the people it focuses on; either consciously or unconsciously "all trial participants act differently in the presence of television cameras."⁸³

The Chief Justice pointed out that the events surrounding the Estes case showed a vivid illustration of the inherent prejudice of televising court proceedings. He stated

The evil of televised trials, as demonstrated by this case lies not in the noise and appearance of the cameras, but in the trial participants' awareness that they are being televised. To the extent that television has such an inevitable impact it undercuts the reliability of the trial process.⁸⁴

Justice Warren concluded:

The television camera, like other technological innovations, is not entitled to pervade the lives of everyone in disregard of constitutionally protected rights. The television industry, like other institutions, has a proper area of activities and limitations beyond which it cannot go with its cameras. The area does not extend into an American courtroom.⁸⁵

The unique aspect of this case was that the five members of the majority were convinced television was turning the courts into a theatre and commercial entertainment. They pointed out that the tapes of the hearing on September 4, 1964, were run in place of the "Tonight Show," and another station ran the tapes in place of the late night movie, while advertisements for soft drinks, soaps, eyedrops and seat covers were inserted during the commercial pause in the proceedings.⁸⁶

Commenting on the phenomenon, Chief Justice Warren wrote:

The televising of trials would cause the public to equate the trial process with forms of entertainment regularly seen on television and with the commercial objectives of the television industry.⁸⁷

Justice John Harlan in his concurring opinion confined its conclusion to the special facts of the Estes case.

Although the decision had a five-four vote majority, it was the opinion of Justice Harlan that kept the Supreme Court from establishing a permanent ban. Three of the justices were ready to seize the opportunity offered by the Estes case to finally put the issue to rest as a matter of constitutional law.⁸⁹ But Justice Harlan restricted the majority opinion and paved the way for a wait on the new medium by leaving room for future experimentation.

In his concurring opinion, Justice Harlan stated:

Permitting television in the courtroom undeniably has mischievous potentialities for intruding upon the detached atmosphere which should always surround the judicial process. Forbidding this

innovation, however, would doubtless impinge upon one of the valued attributes of our federalism by preventing the states from pursuing a novel course of procedural experimentation.⁹⁰

He agreed that in the *Estes* case the use of television and other electronic media equipment was made in such a way that the right to a fair trial assured by the Due Process clause of the Fourteenth Amendment was infringed. But even so Harlan suggested:

The day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process. If and when that day arrives, the constitutional judgment called for now would of course be subject to re-examination in accordance with the traditional workings of the Due Process Clause.⁹¹

The Chief Justice pointed out that he only could conclude with this particular case that televised trials, at least in cases like this one, "possess such capabilities for interfering with the even course of the judicial process that they are constitutionally banned."⁹²

Justice Potter Stewart with whom Justice Clark, Justice William Brennan, and Justice Byron White joined in dissenting, wrote he could not agree with the court's decision that the circumstances of the *Estes* trial led to a denial of the partitioner's (*Estes*) Fourteenth Amendment rights. He did agree that the use of television in a courtroom at the present state of the art is an extremely unwise policy which invites many constitutional risks and detracts from the inherent dignity of the courtroom.⁹³

Touching on the realm of free communication, Justice Stewart stated:

I would be wary of imposing any per se rule which, in the light of future technology, might serve to stifle or abridge true First Amendment rights. The idea of imposing upon any medium of communications the burden of justifying its presence is contrary to where I had always thought the presumption must lie in the area of First Amendment freedom.⁹⁴

Justice Stewart concluded that where there is no disruption of the "essential requirement of the fair and orderly administration of justice, freedom of discussion should be given the widest range."⁹⁵

Justice White also dissenting stated the currently available materials and evidence used to assess the effects of cameras in the courtroom are too sparse and fragmentary to constitute the basis for a constitutional judgment permanently barring any form of electronic coverage. He emphasized that the Supreme Court had earlier ruled in a similar context (*Rideau V. State of Louisiana*) regarding the use of cameras in courtrooms. "We know little of the actual impact to reach a conclusion on the bare bones of the evidence before us."⁹⁶

Donald Gillmor, a professor in the School of Journalism, University of Minnesota, points out his disagreement with the majority's view in the *Estes* case regarding televised trials. He claimed some opinions of the Chief Justice "do no honor to American Journalism." He wrote:

In the judgment of some critics of the court,

there was much poppycock in the majority opinions in the Estes case. Television coverage of a trial need not necessarily imply either notoriety or morbid public interest. The public interest may be legitimate.⁹⁷

The Estes decision to allow the use of cameras would be a violation of the defendant's Fourteenth Amendment right to due process virtually closed state courtrooms to cameras. The debate confirmed for most judges the wisdom of Canon 35 that television was a threat to the decorum and dignity of their courtrooms. In addition, the ambiguity of the Supreme Court's decision made any experimentation risky. Only Colorado continued to allow cameras in the courtroom after the Estes decision, but only with the defendant's approval. More than a decade would pass before any significant number of judges would begin to think about the possible benefits of television. The Estes case has been considered here at greater length because it is extremely illustrative of the issue of cameras in courtroom (electronic coverage of court proceedings).⁹⁹

The Estes ruling did not end the controversy as the media continued to push the issue. The Court of Appeals for the Fifth Circuit in 1967 upheld the contempt conviction of a television news photographer who, in violation of a standing order of the court, took television pictures of a defendant and his attorney in the hallway outside a courtroom after the defendant's arraignment.¹⁰⁰ The order followed recommendations of the Judicial conference of the United States by condemning the taking of photographs and

broadcasting in the courtroom or its environs in connection with any judicial proceeding.¹⁰¹ "A defendant in a criminal proceeding," said the court, "should not be forced to run a gauntlet of reporters and photographers each time he enters or leaves the courtroom."¹⁰²

The creation of adverse media publicity by electronic equipment began to have less effect as grounds for a mistrial or unfair trial by the later part of the sixties. Various appeals courts ruled out adverse media publicity as grounds for a new trial. The Michigan Court of Appeals held that the reporting by a local radio and a local television station shortly after a defendant's arrest that he was suspected of killing his son with a belt and a frying pan was not sufficient to establish that publicity had denied the defendant a fair trial where there was no evidence that the broadcasts prejudiced the deliberations of any juror or that they were part of an atmosphere which created a high probability of prejudice.¹⁰³ (People v. Person, 1974 W.W. 2d 67 Mich. App. 1969).

Another Appeals Court, in Margoles V. United States, 407 F. 2d 727 (7th Cir. 1969) also ruled that where there is no threat or menace to the integrity of a trial, the courts should refrain from controlling news coverage of a case. But when such threats arise, the court should take appropriate steps to protect its integrity depending upon the severity of the threat to the integrity of the trial.¹⁰⁴

Canon 3A (7): ABA Canon of
Judicial Conduct

Canon 35 remained unchanged until 1972 when the Canons were replaced by the code of judicial conduct. Canon 35 became 3A (7) of the new rules. It acknowledges the advantages of modern technology for presenting evidence, making a record, and other purposes of judicial administration but not for news coverage. It states that a judge should prohibit broadcasting, telecasting, recording, or taking photographs in the courtrooms and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that the judge may authorize:

- (a) The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration.
- (b) The broadcasting, televising, recording or photographing of investive, ceremonial, or naturalization proceedings.
- (c) The photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
 - i. The means of recording will not distract participants or impair the dignity of the proceedings;
 - ii. The parties have consented and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
 - iii. The reproduction will not be exhibited until after the proceedings has been concluded and all direct appeals have been exhausted; and
 - iv. The reproduction will be exhibited only

for instructional purposes in educational institutions.¹⁰⁵

However, since temperate conduct of judicial proceedings is essential to the fair administration of justice, the recording and reproduction of a proceeding should not distort or dramatize the proceeding.

Though Canon 3 (7) does not have the force of Law in and of itself, it has the support of the ABA which signifies that it may be followed by most states in the country. In August 1978, a revision of the 1966 ABA Standards regarding a fair trial and free press (The Reardon Report) was presented to the ABA convention. The proposed revision included a statement that television, radio, and photographic coverage of judicial proceedings is not inconsistent with the right to a fair trial.¹⁰⁶ The ABA House of Delegates adapted the revision but deleted the section dealing with electronic coverage (television, radio, and photographic coverage). Hence, the standards relating to a fair trial and free press continued to ignore that controversial issue, and the House of Delegates overwhelmingly rejected any change in the Canon at its meeting in February, 1979.¹⁰⁷

Had it accepted the revision of the Canon, a change in the wording of Canon 3A (7) would have been necessary.¹⁰⁸ However, the action and behavior of the House of Delegates towards the issue clearly indicates that the American Bar Association remains adamant towards the issue of electronic coverage of court proceedings.

Bar-Press Confrontation

Debate continues regarding the role of the camera, radio and microphone as well as the pen and typewriter in the coverage of pre-trial and courtroom proceedings. Conflicting opinions about the issue varies in statements made by journalists and legal experts and in the opinions of the judges themselves. Opinions like those of the late H.B. Swope, former editor, New York World, are common: "There are rights that the accused must be guaranteed, for after a climate has been created, you could convict St. Peter."¹⁰⁹

Claude R. Sowle, former associate dean, Northwestern University School of Law said:

In my opinion, pretrial reporting can and often does serve a useful purpose. And a strong and free press is every bit as essential as a sound court system to the preservation of our way of life.¹¹⁰

Some legal practitioners argue that media coverage of details of arrests, proceedings of investigators, preliminary hearings and the actual trials impair the effective functioning of the judicial process.

Justice Douglas, a vigorous champion of First Amendment rights, considered mass opinion a dangerous master of decision when the stakes were life and death.

It (media) has no business there. It is anathema to the very conception of fair trial. The courtroom at these times is as sacrosanct as the cathedral to be guarded against all raucous, impassioned and foreign influence.¹¹¹

The late justice also conceded that rules of evidence are designed to narrow the issues and protect the accused

against prejudice. "Judges, not newspaper reporters, fashion and supervise those rules . . . for legal trials are not like elections, to be won through the use of the meetinghall, the radio and the newspaper."¹¹²

The late U.S. Supreme Court Justice Stanley F. Reed expressed concern about media stimulation that can lead to "grievous tragedies in the administration of justice."¹¹³ The late Justice Hugo Black, a leading guardian of the First Amendment, was highly sensitive to the due process rights of the accused. He seemed to suggest the total exclusion of the media from the courtroom. In his dissenting opinion in *Cox V. Louisiana* the judge wrote:

The very purpose of a court system is to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.¹¹⁴

Chief Justice Warren E. Burger, chairman of the judicial conference of the United States, has often and openly expressed his hostility towards media coverage of court proceedings. He has said that he would not "sit on the bench if there were a television camera in the room."¹¹⁵ Cameras have never been allowed in the Supreme Court chamber, even for such rituals as the oath-taking ceremony for a new justice or when the Chief Justice delivers public speeches. Burger often has claimed that allowing television coverage of court proceedings was an invasion of privacy.¹¹⁶

Justices of the Supreme Court seem to have recognized the controversy surrounding electronic coverage in the Free Press-Fair Trial issue and have admitted the possibility of

an unfair trial because of prejudicial publicity. Justice Clark speaking for the majority in the *Estes V. Texas* case said:

While maximum freedom must be allowed the press in carrying on this important function in a democratic society its exercise must necessarily be subject to the maintenance of absolute fairness in the judicial process. The life and liberty of any individual in this land should not be put in jeopardy because of actions of any news media.¹¹⁷

Some authorities in the bar and the media have advocated voluntary controls to limit sensational publicity surrounding a trial. They believe that members of the media should try to reach an accord among themselves as to what type of information should not be broadcast and published.

Proponents and protectors of absolute media freedom argued there should be no control whatsoever in the coverage of trials and criminal cases. Based on the First Amendment, the contention of the media is that freedom carries with it a compelling obligation to keep the public informed on all pertinent issues. Dissemination of information they argue should be immediate, accurate and objective.

Journalists in both print and the electronic media, share the belief that, rather than endangering the rights of the accused, trial coverage helps to discover violations of rights, such as secret confinement, denial of access to family or counsel, prolonged custody without proper arraignment, search without warrant and maltreatment under custody.

James R. Wiggins, former editor of the Washington Post, said:

The full reporting of judicial proceedings is indispensable to the exercise of the accused's constitutional rights. It improves the quality of the testimony, informs the public of the efficiency of its courts, and educates the community in the nature of judicial proceedings.¹¹⁸

Supporters of the ban on electronic media coverage of court proceedings, mostly lawyers and judges, contend the use of cameras in courtrooms is a dangerous phenomenon that creates unwanted publicity, discourages witnesses from appearing in court cases, and causes unwanted anxieties and fears in clients and the possibility of a rowdy courtroom.¹¹⁹

Joseph Costa, former chairman of the board, National Press Photographers Association, Inc., views a ban on cameras in courts and censorship of information generally as dangerous. "The American Public is conditioned to receiving and demands to know the facts regarding any crime of great public interest."¹²⁰

Those who are most anxious about television's impact on the judicial process tend to be those with little or no exposure to actual coverage. There are amazing tales and conjectures in various forms from critics around the country who project a list of horrors if television cameras are allowed to stay in the courts. In places like Florida where pictures from the courtroom are commonplace daily, the "real world" bears no resemblance whatsoever to the doomsday forecasts.

Critics believe TV will corrupt the judicial process. But Florida, the leader in televised trials, has yet to see

the "dire consequences" critics predict. Television as a medium and an industry deserves all of the intense scrutiny it receives but not all of the criticism is valid or fair. Those who equate television coverage of courts with a greedy search for entertainment, ratings and profits grossly distort the art of electronic journalism.

The nation's most widely read newspapers, The New York Times and The Wall Street Journal also base their advertising charges on the size and make up of audiences they deliver and in quest of larger audiences.

But it doesn't follow that their news coverage necessarily is predicated on such consideration. To date not a shred of material evidence has emerged to show that camera access has been incompatible with the right to due process and a fair trial,¹²¹ and to the contrary because cameras have an inherent capability that pencil and paper do not. Television conveys the reality of the courtroom far more accurately than any other reportorial tool, and conveying that reality advances the ends of justice.¹²²

The Florida Supreme Court, in its final orders amending the code of judicial conduct, noted that newspapers and other print media also deal in entertainment, and asked: "Is a 'men's entertainment' magazine more calculated to educate and less to entertain than the local television station?"

The best answer to such a question probably would be based on value judgment, but it would seem absurd for an

individual to suggest that a reporter for such a magazine should be precluded from covering and reporting a trial because it is not intended to educate or inform the public but intends to exploit the courts commercially.¹²³

Critics also contend that television cameras, apart from their effect on defendants, lawyers, judges, juries, witnesses, and the Sixth Amendment, also will change the respected judicial institutions. Television cameras have focused on state legislatures, school boards, county commissions, zoning boards, and the U.S. House of Representatives and did not remake these institutions.

The legislature like the courts deal with issues affecting lives, liberty, property, and safety of the individual. Allen Morris, the highly regarded clerk of the Florida House of Representatives and a historian and student of the legislature for half a century, says about TV coverage:

Television has subtly altered the legislative process for the better. Many of our legislators had their doubts about the wisdom of gavel-to-gavel television because they feared television would encourage grandstanding. This did not happen, instead television coverage had a favorable impact on the lawmaking process. No one mumbles bills through. You seldom see legislators reading newspapers and never see them eating lunch at their debates anymore . . .¹²⁴

With the presence of television cameras, and its public scrutiny, those sponsoring bills are more careful to give the House and the public an adequate explanation of what a pending measure does. In short debates have become far more structured.

Proven Advantages and Possible
Disadvantages of Cameras in
Courtrooms

Though there are notorious and disturbing trials, courtroom television didn't invent nor cause them. It only records them when allowed to bring them into the homes of thousands of viewers eager to learn about them.

There were notorious trials before and without cameras. There were no cameras during the trials of Patty Hearst, Sacco and Vanzetti, John Peter Zenger, The Chicago Seven, The Scottsboro Boys, Murph the Surf, or Joan Little, despite the fact all are notorious.¹²⁵

The legal establishment seem divided on the issue of the developing trend towards electronic reportage. Some consider it a rational adaptation to an era in which most Americans get much of their news from television; and see it as a beneficial innovation which will help to educate the public on how the courts operate, and through courtroom consideration of social and national issues will serve to raise the level of public debate.

However, a majority views it as a dangerous trend that only will emphasize the most sensational trials, dramatize courtroom proceedings, increase grandstanding and eventually cause mistrials.

Floyd Abrams, the constitutional lawyer who has been associated with the Pentagon Papers Case, the Myron Farber Case, the Nixon tapes and the Abscam Case said:

The added scrutiny of the camera will help us deal with problems of corrupt prosecutors, of defendants who are too close to judges, of judges who have a tendency to doze off. Television will be an additional check on governmental abuse and, as such, a good thing.¹²⁶

An example of such scrutiny is the downfall of Judge Christ T. Seraphim of Milwaukee, whose heavy-handed behavior on the bench had been a focus of discussion in the news media for years but without any results. Proud of his record as a hardline law and-order judge who had sentenced thousands of defendants to various jail terms, Judge Seraphim never objected when station WHA in Madison, Wisconsin, decided to take television cameras into his courtroom.

The aftermath result was a piercing public-television documentary which graphically exposed what appeared to many as insensitively and an overbearing manner of the judge. The television segment later became part of the evidence used by the Wisconsin Judicial Commission in finding the judge guilty of "misconduct." He was subsequently suspended from the bench for three years.¹²⁷

Eric Saltzman, the former director of the Project in Criminal Trial Advocacy at Harvard Law School, said:

There's a lot more of this going on than the general public realizes - judges who think the courtroom and its procedures are theirs, judges who don't follow the law, and just plain incompetent judges...and there are lawyers - lawyers arriving in court late, lawyers who don't prepare properly for a case, and lawyers whose standards are lower than they should be. The threat that one morning they might arrive in court and find a camera there, could have a very beneficial effect on the system.¹²⁸

Floyd Abrams points out some of the possible benefits of electronic coverage over traditional means of reporting courtroom events are that electronic reporting is more real, more accurate, more vivid, and more informative. Television adds an immediacy you can't get from printed words and courtroom sketches, he said.¹²⁹

Accuracy and vividness also were emphasized by Edward D. Cowarts, Chief Judge of Miami, who has presided over a number of televised trials including the highly publicized sex-murder trial of Theodore Bundy. At a meeting of the Bar Association of the City of New York on the subject of televising trials, Judge Cowart said:

There is no doubt that with cameras reporting is more accurate, the reporter doesn't have to do his story from notes or from memory, which might be faulty. He can show the actual tape. That disseminates graphically what takes place in the courtroom.¹³⁰

However, a poll of members of the ABA shows that more of that organization's members oppose televising than support it. Most lawyers contend "people who are on camera act. Everyone in the courtroom will be play acting for the camera."¹³¹

Roy M. Cohn, a New York attorney, thinks it's a terrible concept from the point of view of rendering justice:

It would convert the courtroom to a stage and deflect the trial from its true purpose, which is the search for truth. Attention is going to go away from the issues in the trial onto who's looking good on camera. The major problem is not the mechanical equipment in the courtroom. The principal problem is the knowledge on the part of

the participants that they are on a television show, that they are playing to the grandstand. During the Army-McCarthy hearings, I knew every minute that we were on television and that 30 million people were watching it.¹³²

John Suttro, San Francisco attorney, was of the opinion that televising court trials turns them into "entertainment and drama to be toyed with by the media and public." He said cameras in courtrooms would upset witnesses, and jurors in that "If a witness had to be subpoenaed to testify because he is unwilling to volunteer, then the presence of television would scare him to death."¹³³ But to date there has been no research evidence that shows or links fear of witnesses or play acting in courts with television cameras or any other form of electronic news coverage devices.¹³⁴

Some lawyers and judges call views propounded by critics of electronic reportage as "baseless." F. Lee Bailey, who defended Dr. Sam Sheppard in his retrial, is on record as saying that the public has a right to know what goes on in its courtrooms and that television, with its ability to convey constantly changing facial expressions and vocal inflections, is far more informative than the print media. He also believes the presence of a television camera in a courtroom would improve the quality of justice:

...Not only would a lawyer not dare to come into a courtroom unprepared, but a witness might be less likely to lie because so many people were watching.¹³⁵

Robert A. Nance, attorney in Stillwater said:

I favor the system of cameras in courtrooms among such reasons because it encourages a higher standard of performance from the three parties

involved. Though, this can in some cases apply to mere showmanship, its most important tool is the education aspect and watchdog of the judiciary by making public its weaknesses and strong points. It can also expose the finding of some lawyers who sometimes dwell on details by repetition in a bid to get an adjournment and reprepare themselves.¹³⁶

Judge Jack Weinstein of the U.S. District Court at Brooklyn, New York said in a U.S. News interview that putting the eye of the public into the courtrooms through the powers of the present electronic media may improve the power of the court system at every level. "Even the U.S. Supreme Court where I think it's perfectly clear that argument ought to be televised."¹³⁷

Ernest Schultz, Jr., formerly of Channel 9, KWTW in Oklahoma City and now executive vice-president of the national Radio Television News Directors Association (RTNDA) said:

Court coverage is important to a free and responsible society. It is objective in its course and should be encouraged and put to use in every state. Critics of the system seem to be unaware of its value in maintaining a free and fair trial.¹³⁸

Schultz cited the presence of modern electronic broadcasting equipment as a great innovation that will help put down unnecessary criticism of electronic coverage. He said that modern TV cameras and microphones have capabilities of not making the slightest distraction. However, some really want to bother themselves about their presence:

Cameras remain on tripods and won't have to be moved about. They operate on any available light source; some even operate in the dark. They don't make any noise and there is no "research" to show that camera coverage affects people during court

cases. Rather, it lets participants, lawyers, judges, prosecutors, [and] witnesses, give their best performance. Each will realize the fact that this is important. I am being watched and need to put out my best performance.¹³⁹

Tim O'Brien, United States Supreme Court correspondent for the ABC television network said, "Having cameras in courtrooms or not is a public issue that should be left open for the public to decide." He believes that cameras should be present in every courtroom at all levels. "Its presence will not affect fair justice or change the nature of trials, it would enhance and inspire fair and accurate justice based on its openness."¹⁴⁰

The Florida Experience

Until 1977, Florida, like most states, followed the guidelines of the ABA's Canon 35 and its successor, Canon 3A (7). The Florida Supreme Court was petitioned by state media groups like Post-Newsweek Stations, Florida, Inc. to lift the ban through a modification of Canon 3A (7).¹⁴¹

In its petition, Post-Newsweek, a subsidiary of the same company that owns the Washington Post, Newsweek, and other communication interests, including Florida television stations, WJXT in Jacksonville and WPLG in Miami, called Canon 3A (7) "An archaic impediment to fair and accurate coverage of the courts."¹⁴²

It pointed out that:

Most Americans obtain their view of the news from television, yet under the present court rules, coverage of courts by electronic media is awkward and unnatural.¹⁴³

The petition proposed a rule to replace Canon 3A (7). It would allow courtroom coverage by electronic news gathering devices except "upon a showing of probable prejudice" to any party in the case.¹⁴⁴

Other Florida press and bar groups, like the Florida Association of Broadcasters and local Society of Professional Journalists, Sigma Delta Chi chapters, supported the petition. The conference of Circuit Judges and the Trial Lawyers Section of the Florida Bar were totally opposed.¹⁴⁵

After seeing the demonstration of some new electronic news gathering devices, the state Supreme Court ordered a one year pilot program which would put into operation the "most liberal courtroom camera guidelines in the country."¹⁴⁶

Unlike the camera experiments of most other states, the consent of trial participants would not be required under the new rules, which gave access to all state judicial proceedings, including those of the appellate and Supreme Court.¹⁴⁷ Live and taped audio pickup for radio broadcast also was permitted. The only restrictions dealt with the amount, type and location of equipment, and prohibition of eavesdropping on privileged conversations.¹⁴⁸

The Florida Supreme Court expressed its belief that a one-year experimental program was "essential to a reasoned decision on the petition" and entered an order saying:

Consequently, in order to gain the experience which we deem essential to a proper final

determination of this cause, it is the decision of this court to invoke a pilot program with a duration of one year from July 1, 1977, during which the electronic media, including still photography, may televise and photograph, at their discretion, judicial proceedings, civil, criminal and appellate, in all courts of the state of Florida, subject only to the prior adoption of standards with respect to types of equipment, lighting and noise levels, camera placement, and audio pickup, and to the reasonable orders and direction of the presiding judge in any such proceedings.¹⁴⁹

By mid-June 1977, the court issued its experimental guidelines which called for:

1. Only a single video or motion picture camera, a single still photographer, a single audio system. However, two video or motion picture cameras would be allowed in an appellate court.
2. All media pooling had to be done without the necessity for judicial mediation.
3. Only equipment which did not distract with noise or light was permitted. All equipment had to receive pretrial approval by the judge.
4. Media personnel and equipment were restricted to locations set by the judge and were not allowed to move during the proceedings.
5. Courtroom lighting could only be upgraded at media's expense and with the judge's permission.
6. There would be no audio pick-up of privileged conversations.
7. None of the video tape, film, photographs produced should ever be admissible as evidence in later proceedings on the same matter.
8. The media would not be able to appeal rulings made under the guidelines.
9. Members of the media and judiciary who operated under the guidelines were requested to make a report to the court at the end of the experiment.¹⁵⁰

The success of the Florida experiment revolutionized the thinking about television in courts. A number of states adopted the Florida model.¹⁵¹

During the experiment nearly every type of judicial proceeding was covered by Florida broadcast stations. The deliberations of the Florida Supreme Court, criminal trials, civil suits and even traffic court and small claims court cases were covered and reported.¹⁵² All of the video taping, sound and picture editing both for radio and television were conducted under the strictest of guidelines:

Only one camera and one crewman are allowed inside a courtroom; the camera is of the most modern types, as small as a shoe box, completely silent and capable of operating in ordinary room light; its position is fixed and unobstrusive and the camera may enter or leave only during recesses. In addition, coverage is pooled, with one television station operating the courtroom camera and all other stations making video tape recordings in a separate media pooling room.¹⁵³

Noise, light, cables, and confusion which had been the reality of Estes trial did not become the reality of Florida trials. With modern effective electronic equipment and guidelines that regulate every aspect of movement and behavior, electronic coverage of trials posed no physical disruption and no longer were a threat to the decorum and dignity of the court.

During the pilot period, station WCKT-TV in Miami reported that it covered courtroom trials virtually daily, on more than two hundred occasions.¹⁵⁴ Eleven major newspapers also reported the publishing of 473 courtroom

photographs which gave their stories more credibility because of their presence in the courtroom.¹⁵⁵

As to be expected, the Florida experiment did not proceed unchallenged. Appeals based on the presence of the electronic equipment came within a week after the experiment began.

A criminal defendant indicted for several felonious (fraud) acts in a state court proceeding unsuccessfully sought a preliminary injunction in federal court to enjoin the application of the experimental canon. An injunction was not issued since the federal district judge was unable to hold the experimental canon "patently and flagrantly unconstitutional," and the federal court simply abstained.¹⁵⁶

Another federal challenge brought by the widow of a murder victim who asserted a right of privacy under the Ninth and Fourteenth Amendments also was dismissed on abstention grounds.¹⁵⁷

The Florida Supreme Court also rejected an attempt made by a circuit judge to modify the experiment by allowing cameras only when all defendants, witnesses and jurors had given written consent.¹⁵⁸

The constitutionality of the experiment based on the Estes decision was challenged many times during the experiment but the Florida Attorney General rejected such arguments by pointing to the lack of a blanket prohibition against cameras in Estes.¹⁵⁹

In September and October of 1977, the Florida experiment received national and international attention with the coverage of the Miami murder trial of Ronny Zamora who was charged with the killing of an 82-year-old neighbor during a burglary.¹⁶⁰

The case was not the first televised murder trial but was significant because there never had been such wide coverage by and limited control of television cameras. The murder case also attracted national and worldwide coverage because of the unique defense by Zamora's attorney, Ellis Rubin. He argued his client was a "television addict" and acted at the time of the crime under the influence of prolonged, intense, involuntary effects of television.¹⁶¹

The massive coverage attracted both critics and advocates of electronic coverage of court proceedings. The trial was recorded in a noiseless and smooth manner by WPBT of Florida from whom other networks pooled. Due to the nature of the television medium itself, the guidelines set for using cameras in the courtroom and the self-imposed restraint by WPBT, there were differences between what the courtroom observers and television viewers saw.¹⁶²

The difficulty a courtroom observer has before gaining entrance to the courtroom could not be compared to the ease and comfort experienced by the home viewer.¹⁶³

The home viewer had an opportunity to see the responsibility of a courtroom judge, the meaning of indictment, what an autopsy entails, jury selection and other necessary

judicial formalities.¹⁶⁴ The viewer was given the chance to see how the judiciary operates, how jurors wrestle with their biases and personal concerns, their attentiveness and total concentration on the proceedings. The viewer thus became an eyewitness to the courtroom tactics of each lawyer and how this compared to the drama of Perry Mason.¹⁶⁵

Though, there were technical problems like sudden loss of sound, the viewers seemed to indicate a desire for similar future broadcasts. "WPBT received more than 1,000 calls and 2,000 letters on its coverage, most of them complimentary."¹⁶⁶

One viewer wrote, "I found it more enlightening than a semester at law school." Another wrote, "I hope your judicious use of cameras firmly established them as part of every public trial because for the first time thousands of us were able to be on the scene to witness what goes on in real life courtrooms."¹⁶⁷

Presiding Circuit Judge Paul Balces, who originally had been against the Supreme Court's experiment, had nothing but praise for the media pool at the end of the trial, saying, "I have to commend you all . . . you've done a hell of a good job," and even presented the pool with a bottle of scotch.¹⁶⁸

The trial of Mark Herman accused of the shotgun killing of Palm Beach oil executive Richard Kreuzler became Florida's second major televised murder trial in February, 1978.¹⁶⁹ The trial was recorded and televised smoothly

without any major problems associated with electronic coverage even though the defense attorney blamed the guilty verdict returned on his client on the impact of television cameras.¹⁷⁰ Presiding Judge Thomas Sholts said he believed the defendant had received a fair trial and praised the general conduct of the media.¹⁷¹

The Florida Decision and Its Aftermath

The Florida experiment came to an end in July 1978. After reviewing reports and observations filed by judges, media representatives, and other interested parties, the State Supreme Court handed down its final decision on April 12, 1979.¹⁷²

The court granted the Post Newsweek petition for a change in Canon 3A (7). The new Canon would, under the watchful eye of the presiding judge, allow coverage of all public judicial proceedings on a permanent basis.¹⁷³

Justice Sundberg, writing for a unanimous court, rejected the traditional argument against electronic coverage, especially those expressed in *Estes*. He cited the experiences of the year long experiment and the data generated and ruled the court could find little evidence that indicated electronic media coverage had interfered with the fair and orderly conduct of trials.¹⁷⁴

The court pointed out that in some situations a witness might rightly be shielded from camera coverage such as in the case of a minor, rape victim or an undercover police

agent and entrusted the presiding judge to make such decisions on a case by case basis.¹⁷⁵

The Florida experiment shows that most of the objections and pitfalls traditionally associated with electronic coverage do not hold, and those that can cause havoc leading to mistrials happen in extreme cases and which easily can be avoided through stipulated guidelines, rules, and restrictions in and out of the courtroom.¹⁷⁶

For instance, the Florida Supreme Court rejected the assertion that jurors behaved significantly different during the experiment. It called such concerns "unsupported by any evidence" as seen through their observations and the reports of the surveys carried out by the state judiciary.¹⁷⁷

On the possible effects of cameras on witnesses, Judge Baker stated that this was not a problem in the Zamora trial, and pointed out that a judge already had sufficient sanctions to prevent witnesses from viewing other testimony.

The witness who would violate the rule by watching portions of a trial on television or listen to radio broadcasts is the same witness who would without hesitation devour every word in a newspaper article which he had been instructed not to read.¹⁷⁸

The Florida Supreme Court did reject the assertion that witnesses behaved differently during the experiment to hamper a fair trial. But the Court did concede that there were occasional instances of significant adverse impact on some categories of witnesses. The Court therefore made provision for the presiding judge to exclude camera coverage of a particular participant when the effect "could be

qualitatively different from the effect on members of the public in general and such effect will be qualitatively different from coverage by other types of media."¹⁷⁹

The court also dismissed another traditional fear that courtroom cameras would alter a judge's performance citing the lack of any such evidence during the test. It pointed out that "there was no significant difference in the presence of these influences as between the electronic and print media."¹⁸⁰

On the issue that the electronic media were exploiting the court for commercial purposes, the court rejected such argument as baseless and pointed out that newspapers are also commercial entities.¹⁸¹

The Court did concede that selective coverage and editing by the electronic media can sometimes distort courtroom coverage. But it did point out that such practice do no apply only to the electronic media as the same dangers exist with traditional coverage and were therefore insufficient to warrant restrictions on electronic media.¹⁸²

After a year of experimentation and exhaustive coverage of the two criminal trials widely monitored by most states in the country, there seems little doubt that the electronic media could operate in a courtroom without causing the disruptions experienced earlier.

The Court pointed out many of the objections to electronic media coverage are really objections to media coverage in general. The Court, however, did develop

mechanisms and certain corrective adjustments to assure a fair trial without curbing the media, the bar or the police.

These are: (1) change of venue to remove the trial to an area not affected by the publicity, (2) the examination of prospective jurors on the voir dire with the view of eliminating those who may have been influenced, (3) the isolation of juries in protracted cases, (4) the postponement of a trial for substantial periods to allow the effect of prejudicial publicity to wear off, and (5) the reversal of convictions where necessary to assure justice.¹⁸³

Apparently such devices and tests can apply equally well and effectively in an electronically covered courtroom. Apart from increasing the public knowledge and understanding of the judicial process, the use of electronic media in courtroom proceedings also would enhance the image of the bar, bench, and thereby elevate public confidence in the system, Justice Sundberg stated.¹⁸⁴

Though its use is not without potential pitfalls, Justice Sundberg concluded, "A democratic system of government is not the safest form of government, it is just the best man has devised to date, and it works best when its citizens are informed about its workings."¹⁸⁵

The Florida experiment and the Court decision drew swift reactions from other states.

Seventeen states joined Florida in urging the United States Supreme Court to permit experimentation to continue.

So did the Conference of Chief Justices representing the 50 states.¹⁸⁶

On the other hand, the American College of Trial Lawyers as well as a number of legal groups filed briefs opposing the procedure. A poll of ABA members showed an increase of that organization's members opposed to electronic coverage. The majority of the members still hold the traditional fears of unwanted publicity, the psychological effect on witnesses, jurors, and grandstanding and dramatic effects of all sorts.¹⁸⁷

Whitney North Seymour, a past president of the ABA who has opposed electronic coverage of courtroom proceedings for more than 40 years, fears, for instance, that television will cause jurors to lose their anonymity, thereby making them more likely to respond to community pressures and opinions. He concluded:

People may stop them (jurors) on the street and say, 'I certainly would convict that guy' or try to communicate with them at home or with their families. It's a pressure on the jurors. It will affect them.¹⁸⁸

Research studies have yet to show electronic coverage causes psychological and social trauma to the court participants.¹⁸⁹

Although no state that permits the televising of trials allows jury deliberations to be broadcast, some states are taking very seriously the problems of jurors being accosted on the street. They have prohibited cameras in their courtrooms from taking any pictures of the jurors.¹⁹⁰

The issue took a new turn in September of 1979, when the Florida high court refused to review the appeals of two Miami Beach policemen, Noel Chandler and Robert Granger, convicted and sentenced to seven years in jail and nine years probation for robbing a restaurant in Miami Beach on May 23, 1977.¹⁹¹

The state high court refused to review the appeals of the two convicted defendants on the grounds its April ruling rendered the dispute no longer a live legal controversy.¹⁹² The defendants' attorney based his appeal on the presence of television coverage against his clients objections. Two minutes and fifty-five seconds of the trial which depicted only the prosecution's side of the case were broadcast.¹⁹³

On April 21, 1980, the Supreme Court agreed to decide whether camera coverage of courtroom proceedings by either newspaper or television is constitutional.¹⁹⁴

The Supreme Court Decision

Chandler V. Florida

(449 U.S. 460 1981)

In January of 1981, the U.S. Supreme Court decided the case most people associate with the electronic coverage of the courts. Granger V. the State of Florida upheld the presence of cameras in the courts where the states so desired, but it was ruled not unconstitutional for a state to ban cameras from the courts.

The question which this case considered is simple: Is a defendant denied his right to a fair trial when his trial is televised over his objection? Noel Chandler and Robert Granger, former Miami Beach policemen, were charged in July 1977 with conspiracy to commit burglary, grand larceny, and possession of burglary tools.¹⁹⁵ The counts also covered breaking and entering a popular local restaurant and the jury returned a guilty verdict on all counts. Appellants moved for a new trial claiming that television coverage in defiance of the defendants' objections had denied the appellants a fair and impartial trial. However, no evidence of specific prejudice was tendered.¹⁹⁶

The Florida District Court of Appeal affirmed the convictions by reasoning that the Florida Supreme Court having decided to permit television coverage of criminal trials on an experimental basis, had implicitly determined that such coverage did not violate the federal or state constitutions. The District Court of Appeals also pointed out it found no evidence in the trial record that indicates the presence of a television camera had hampered the defendants in presenting their case or had deprived them of an impartial jury.¹⁹⁷

In their briefs to the United States Supreme Court the attorneys for Chandler and Granger argued that the mere presence of television cameras during a trial prejudices its conduct by influencing the behavior of the witnesses, attorneys and the jurors. Such prejudices they said denies

the defendant his right to a fair trial, and if he objects, the judge should be required to order the cameras shut off. The attorneys emphasized that this is not an attempt to shut the media out of a trial altogether or "gag" the press but contends that the Sixth and Fourteenth Amendment rights of a defendant outweigh any First Amendment right of cameramen to enter the courtroom and record events there. They argued further that:

It is abundantly clear that pervasive publicity and the intrusion of the news media into the trial process itself can so alter, or destroy, the constitutionally necessary judicial atmosphere and decorum so that the defendant is denied the requirements of impartiality to which he is entitled as a matter of due process of law.¹⁹⁸

In response, attorneys for the State of Florida argued that Chandler and Granger received a fair trial maintaining that "the participants and the jurors (in this case) were wholly unaffected by any publicity and the mere presence of a television camera." They pointed out that the Estes decision which the appellants rest their case heavily on does not control this case because it applied to a particular trial and did not ban the presence of all cameras from all courtrooms.¹⁹⁹

The State's brief also addressed those who link the televising of the trial of the former policemen charged in the McDuffie death with the subsequent riots in Miami. If the media bore any responsibility for the riots, it stated it was due to its initial reporting of the McDuffie case, and not the televising of the trial; "had the entire trial

been broadcast, instead of excerpts, citizens could have seen the system at work instead of merely learning the results;" - and there might have been less violence, because there would have been better public understanding of the process leading to the verdict.²⁰⁰

Chief Justice Warren E. Burger delivered the opinion of the court in the Chandler Case and was joined by Justices William Brennan, Thurgood Marshall, Harry Blackmun, Powell, and William Rehnquist.²⁰¹ Chief Justice Burger declared that the televising of trials, even in the face of a defendant's objection, is within the bounds of the constitution unless:

If it could be demonstrated that the mere presence of photographic and recording equipment and the knowledge that the event would be broadcast invariably and uniformly affect the conduct of participants so as to impair fundamental fairness, our task would be simple; prohibition of broadcast coverage of trials would be required . . .²⁰²

Justice Burger wrote:

The question presented on this appeal is whether, consistent with constitutional guarantees, a State may provide for radio, television, and still photographic coverage of a criminal trial for public broadcast, notwithstanding the objection of the accused.²⁰³

The Chief Justice answered that the requirement of a public trial is satisfied by the opportunity of members of the public and the press to attend the trial and report what they have observed. He added that an absolute constitutional ban on broadcast coverage of trials cannot be justified simply because there is a danger that, in some cases, prejudicial broadcast accounts of pretrial and trial

events may impair the ability of jurors to decide the issue of guilt or innocence uninfluenced by outside forces.

Justice Burger contended that the risk of juror prejudice in some cases does not justify an absolute ban on news coverage of trials by the printed media; so also the risk of such prejudice does not warrant an absolute constitutional ban on all broadcast coverage.²⁰⁴

The Chief Justice pointed out that the appellants have shown nothing to demonstrate that their trial was subtly tainted by the electronic media. He stated a defendant must show something more than juror awareness that the trial is such as to attract the attention of broadcasters to demonstrate prejudice in a specific case.²⁰⁵ He wrote:

Dangers lurk in this, as in most, experiments, but unless we were to conclude that television coverage under all conditions is prohibited by the Constitution, the States must be free to experiment. We are not empowered by the Constitution to oversee or harness State procedural experimentation; only when the State action infringes fundamental guarantees are we authorized to intervene. We must assume State courts will be alert to any factors that impair the fundamental rights of the accused.²⁰⁶

The Chief Justice concluded that these dangers do however not warrant an absolute ban on all broadcast coverage.²⁰⁷

Justice White, concurring in the judgment restated his opinion as given in the *Estes* case that he remains convinced that a conviction obtained in a State court should not be overturned simply because a trial judge refused to exclude television cameras for televising all or parts of a trial to

the public. He wrote:

The experience of those States, which have, since Estes permitted televised trials supports this position, and I believe that the accumulated experience of those states has further undermined the assumption on which the majority rested its judgment in Estes.²⁰⁸

Prior to the U.S. Supreme Court ruling some important trials covered by the electronic media became part of the controversy. Notable among them is the trial of the five white policemen accused of beating to death a black insurance man, Arthur McDuffie.

The trial was televised almost in its entirety. After an all white jury found the policemen not guilty despite revelations by witnesses that McDuffie never resisted the policemen, a violent race riot erupted. The subsequent riot, violence, and destruction brought much criticism that camera coverage of the trial, not the acquittal of the policemen, triggered the riot.

Joel Hirschhorn, attorney for the plaintiff at the Chandler and Granger case, again expressed his absolute disagreement with the presence of cameras in courtrooms, saying:

The recent civil disorders in Miami were not solely the result of what happened in the McDuffie case. But the trigger that fired the shot, that ignited the city of Miami, that caused 100 million dollars in damage and that caused death and injury to many was the messenger (television) and not the message (the acquittal of the policemen).²⁰⁹

Norman Davis, vice president of WPLG-TV in Miami and the nation's fiercest crusader for electronic coverage of courtrooms disagrees. He says:

There had been a series of episodes involving the criminal justice system which had angered many blacks - one incident after another involving alleged police brutality and gross insensitivity by the Sheriff's department. The McDuffie killing took place on top of all these other incidents. Then the Miami Herald discovered that there had been a cover up, so by the time the trial came up, you could almost cut the tension in the air with a knife. The black community wanted justice and when justice didn't come as they perceived it, the frustration just blew out the top That had nothing to do with the messenger, that was just the message.²¹⁰

Eric Saltzman, who spent months gathering materials for a film on the McDuffie trial, said the most upsetting and most dramatic thing people saw on television was the reaction shot of McDuffie's mother who broke down in tears when the judgment was pronounced.

Joel Hirschhorn, Chandler's attorney, countered that the electronic media only covers the most sensational trials and its most sensational minutes. Rather than informing or educating the public the electronic media would in many cases "attempt to maximize ratings by offering selected, lurid glimpses into judicial proceedings."²¹¹

Norman Davis, vice president of WPLG-TV in Miami, again disagrees saying print journalist and those from the electronic medium, always have done concise summaries of what happens rather than recitations of the transcripts. He said:

That's always been the mode of reporting trials. It is rare in the extreme for newspapers to print a full transcript, or even a lengthy transcript, of what happened on a particular day in court. They pick and sift and choose. News by definition is a digest of events rather than a full recounting of them²¹²

However, Davis' explanation failed to show that trial reports in newspapers, though condensed, still are generally more detailed and elaborate than the electronic medium which has a shorter and very limited air time on a particular segment of a program.

Steve Nevas, First Amendment Counsel for the National Association of Broadcasters (NAB), blamed the slow progress of the issue on the ABA and members of the judiciary. "The fact is judges and lawyers tend to think of the courts as their private preserve and sanctuary. They don't really want TV looking over their shoulders."²¹³

Judge Bruce Wright of the New York State Appellate Court disagreed with Nevas. He said most hands on the bench realized the benefits of the electronic medium (television) in the courts far outweighed its risk:

I would certainly be delighted to see the courts open to television cameras, because far too long the court system has been a sort of secret society. The more the public can see what goes on in courtrooms, the more they will trust judges rather than fearing them. Especially if people want reform in the system, they must know more about it than they know now.²¹⁴

Most states have exhibited great fear of the electronic medium in their courtrooms. Most, like Florida and Oklahoma, have insisted on an experimental period before making a permanent rule change. Many also have paid for expensive studies of the medium's impact on the trial process.²¹⁵

California is in a tryout period that is supposed to end December of 1982. It has a consulting group whose task

has been to observe people's behavior at trials and pass out questionnaires.²¹⁶

Gerald Miller, a communication professor at Michigan State University and a well known authority on the issue, is one of the consultants. After attending various TV/radio covered trials in the state, including that of Carol Burnett and the National Enquirer, Professor Miller said, "TV seems to have no detectable effect on anybody."²¹⁷

That seems to be everyone's result and no try out period to date has ever ended with a state's refusal of the electronic media. Yet, suspicious attitudes based on the Hauptman and Estes trials remains, and each state believes it must run its own tests while 12 states out of the 38 states that allow some form of coverage still forbid all audio, video, and still camera coverage of the judiciary.²¹⁸

A perusal of the different opinions presented above suggests the two sides - bar and the media - have yet to understand each other's functions.

However, the literature indicates that generally, lawyers and other court practitioners seem to be more supportive of the Sixth Amendment. Members of the media advocate freedom of the press. Dr. Marlan D. Nelson, director, School of Journalism and Broadcasting, Oklahoma State University, found while analyzing 542 articles pertaining to this issue that, "If a lawyer discussed the subject he usually titles his article 'Fair Trial - Free

Press'. If a journalist wrote the article, he titled it 'Free Press and Fair Trial'".²¹⁹

Some called for the co-existence of the two rights. Francis L. Dale, past president of the Ohio Bar Association, wrote:

I believe that the so-called free press-fair trial controversy has resulted primarily from the fact that most members of the press and the bar do not understand the origin, history and application of these two very important parts of the Bill of Rights. If we are fully aware and fully understand these two amendments, we can secure fair trials for the accused in criminal cases, without at the same time submitting to limitations on the freedom of the press.²²⁰

The Chandler ruling neither endorsed nor opposed television in the courtroom. It simply said that it was constitutional for states to experiment if they so choose.²²¹

The ruling initially was expected to bring some changes like more states opening up courtrooms to the electronic media. But it only added fuel to the fire of resistance. Only eight states since have joined the thirty states that allowed electronic media in their courtrooms.²²²

There's a lot of "hanging back," said Norman Davis. The Supreme Court failed to state in its decision that TV has a constitutional right to go into courts. Nor did the justices invite the medium into their own proceedings.²²³

Schultz said:

The feedback we are getting is that it didn't change anything, that it did not put a burden on anybody to do anything. Chief Justice Warren E. Burger, who wrote the Chandler opinion despite his own hostility to cameras in the courtroom, has

made clear in private that the decision was meant only to allow the states to experiment if they wish. State judges who talked with him last summer reportedly got a lecture against reading the ruling as an endorsement of TV coverage.²²⁴

Schultz said the broadcast industry is troubled in that the state judicial response to Chandler, and to the earlier *Richmond Newspapers V. Virginia*, 448 U.S. 5551 (1981), which gave print media a constitutional right of access to criminal trials, has not focused on a favorable tone and content of those opinions: "You take the language of Chandler and put it together with *Richmond* and it spells 'mother' to us. But in practice, it does not seem to spell more access."²²⁵

After the Chandler ruling broadcasters and their lawyers made efforts in some state courts to convert experimental coverage rules to permanent orders. They also asked for the relaxation of restrictions on criminal trial coverage. Neither was successful.²²⁶

Since the Supreme Court decision has not changed anything nor brought any improvements or more states involvement, television camera crews may expect to continue to cover most of the nation's courthouses from across the street. Broadcast coverage inside courtrooms is allowed more as an exception than as a rule, and that is not likely to change noticeably for at least several more years. A survey of laws and court regulations nationwide shows these patterns.

TV coverage of criminal trials, direct from courtrooms, is not being allowed much more widely now even though the Supreme Court took away the major constitutional barrier in 1981.

Coverage of civil trials (usually, not so newsworthy) is gaining permission only a little more often.

Broadcast access is most available for hearings in state appellate courts, especially the state supreme courts.

But there is no broadcast coverage permitted in any case in any federal court, from the district courts up to the U.S. Supreme Court.²²⁷

After 26 years since the "experiment" of TV coverage of courts began in Colorado, it still is treated in many states as merely experimental and the number of states presently involved in coverage shows limited promise that coverage will grow much further.²²⁸

Experts in the field note that rather than having more states open up their courts, a new wave of resistance appears to be setting in. Schultz said:

The easy victories have all been won. In those states where the bench and the bar have been receptive, we have gone pretty much as far as we can. In the rest of the states, it is going to be very, very slow. It is going to be very, very difficult to ease the restrictions that now exist, and to get states that allow no coverage to open up.²²⁹

The trial of wealthy Claus Von Bulow in March of 1982 was one of the most notorious criminal trials to be covered as part of a state (Rhode Island) one year experimental program.²³⁰

Von Bulow was convicted of trying twice to murder his wife, and while the judgment was being read TV cameras focussed on the defendant at the same time they showed how his teenage daughter reacted to the verdict. This triggered criticisms and complaints of camera coverage concentrating on the emotional aspect of the case.²³¹

But, the reaction and views from inside the courtroom were more positive and complimentary.

The Superior Court presiding justice, Anthony Giannini, said:

We had a lot of fears before we started this experimental year. We were afraid that cameras would make judges and others behave differently, but I haven't seen it happening. I haven't seen lawyers grandstanding more than usual. I haven't found witnesses more timid. The cameras haven't been annoying or disruptive.²³²

Andrew Teitz, a court research technician who doubled as a press-liaison man during the trial, was of the impression that TV received many compliments from the public and very few complaints. As for the emotional moment, Teitz said, "If TV was guilty of exploiting that heart wrenching scene", (when the judgment was being read) "so were newspapers such as the New York Times which ran the picture on its front page."²³³

Rhode Island's experience with the Von Bulow trial received national attention but there was no circuslike atmosphere or sensational false reports which simply reflects what seems to happen in those states that

experiment with the issue. The national verdict on TV in the courtroom is: with reservations, it seems to work.²³⁴

In Oklahoma, the State Supreme Court adopted rules authorizing a one-year pilot program which began on January 1, 1979. Electronic media and still photographers may televise, broadcast, and photograph any Oklahoma court proceeding, subject only to the discretion of the judge and court adopted standards governing type, number, and placement of equipment.²³⁵

In short, the Oklahoma Supreme Court adopted revised Canon 3A (7) of the code of Judicial Conduct permitting electronic and photographic coverage of courtroom proceedings.²³⁶

The revised rule follows that set by Florida except for one or two modifications -- the court retains jurisdiction to revoke, modify or amend the Revised Canon 3A (7) at any time during the experimental period or thereafter.²³⁷

The Oklahoma revised Canon 3A (7) rules and guidelines states that a judge may permit broadcasting, televising, recording and taking photographs in the courtroom during sessions of the court, recesses between sessions, and under the following conditions:

- (a) Permission shall be granted by the judge to photograph, record, and under such conditions as the judge may prescribe;
- (b) The media personnel will not distract participants or impair the dignity of the proceedings;
- (c) No witness, juror or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such a witness, juror or party be

- broadcast or telecast;
- (d) No photographing or broadcasting of any court proceeding which under the state law are required to be held private;
 - (e) No photographing or broadcasting of any portion of any criminal proceedings, unless all accused persons who are on trial shall have affirmatively, on the record given their consent to such photographing or broadcasting;
 - (f) The number and kind of cameras and microphones permitted in the courtroom shall in the final analysis be subjected to the discretion of the judge. He shall also stipulate guidelines in regards to location of cameras, video feed, pooling, audio room, lighting, radio recording facilities, and not more than two television cameras, and two still photographers, each with not more than two cameras would be permitted in the court;
 - (g) No witness, juror, or party shall give their consent for any consideration, of any kind or character, either directly or indirectly; and,
 - (h) The Supreme Court, the Court of Criminal Appeals, and the Court of Appeals may authorize the broadcasting, televising, or taking of photographs of appellate proceedings and oral arguments.²³⁸

The revised rule experimental period was expected to last for a period of one year. But it took the State more than three years to experiment before the plan was made permanent on February 22, 1982. (Pilot program started January 1, 1979 were made permanent on February 22, 1982.)

Some states among those that are yet to open their courts to electronic coverage still are considering the chances of studying the issue. However, conflicting opinion continues and the calls for unity and compromise have gone unheeded by the media and the bar.

Professional groups have laid down guidelines and adopted resolutions in a move toward workable solutions. Cases involving the conflict continue and the issue persists. Dr. Walter Wilcox remarked:

Spectacular events have exacerbated the controversy and brought it to general public attention. The Sheppard murder trial, the Billy Sol Estes case, the two Kennedy assassinations and a multiple murder case in Chicago...all are cases in point.²³⁹

An examination of selected free press - fair trial cases will place the conflict between the First and Sixth Amendments in better perspective.

A Review of Cases

Craig V. Harney (331 U.S. 367, 1948)

This case involved a "drawn-out donnybrook"²⁴⁰ between the news media in Corpus Christi, Texas, and a local judge. Somebody sought to repossess a business building in town from a serviceman who claimed to have a lease. He argued the soldier had lost his interest due to nonpayment of rent.

On May 26, 1945, the jury ruled for the defendant soldier but the judge instructed the jury to reconsider and return a verdict for the plaintiff - it refused.

The following day a news item factually reported the court's orders and ended with the sentence: "The effect of this ruling was that Judge Browning took the matter from the jury".²⁴¹

On May 29, the defendant moved for a new trial, and on May 30, an editorial criticized the judge for "travesty of justice" and his refusal to hear both sides of the issue.²⁴²

On June 4, a complaint charging the publisher, editorial writer and a news reporter of the local media with contempt of court was filed by an officer of the county court. The newsmen were found guilty of contempt and the appellate court upheld the conviction.

On appeal, the U.S. Supreme Court reversed the orders of the Texas court by a 6-to-3 decision. It ruled the public had a right to know what went on during the proceedings and the media had every right to report them.

Justice Douglas, in the majority opinion, stated:

A trial is a public event. What transpires in the courtroom is public property. If a transcript of the court proceedings had been published, we suppose none would claim the judge could punish the publisher for contempt.²⁴³

Justice Douglas continued, "The Law of contempt is not made for the protection of judges who may be sensitive to the winds of opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate."²⁴⁴

Baltimore Radio Show V. State (193 MD)
300, 1949; 338 U.S. 912, 1950 -
Certiorari Denied)

The case arose from three contempt citations issued by the Criminal Court of Baltimore, Maryland, imposing fines for news stories aired over the local radio stations about a

murder case at a time when a defendant charged with murder was in custody of the police. A radio broadcast was cited as adding this preamble to the news report: "Stand by for a sensation."²⁴⁵

In the early afternoon of July 6, 1948, Marsha Brill, an 11-year old girl was found stabbed to death. That evening Eugene James, a former offender, was arrested and charged with murder. Stations WITH, WCBM, and WFBR, were reported to have made incriminating news broadcasts and comments about the incident.

A Baltimore trial court found the three broadcasting stations guilty of contempt and imposed fines.

The lower court ruled the broadcasts constituted "not merely a clear and present danger to the administration of justice, but an actual obstruction to the administration of justice in that they deprived the defendant of his constitutional right to have an impartial jury trial."²⁴⁶

The Maryland Court of Appeals reversed the contempt convictions. It ruled there was no direct evidence of prejudice because of the broadcast information, and no clear and present danger to satisfy the appropriate constitutional test.

The court seems to have declined to accept the argument that jurors require more protection from potentially prejudicial comment than judges.

Judge Markell contended that trial by news media had been substituted for trial by jury. Two conflicting

propositions represent much of the argumentation in the case. He wrote: "(a) Prejudice in a jury can always be prevented. So why worry? (b) Prejudice in a jury can never be prevented. So why try?" Judge Markell observes that it was only "a time honored apology for lynch law" to state that the trials in the court and the news media reached the same conclusion.²⁴⁷

The state's Attorney General sought to appeal the appellate court's ruling, but certiorari was denied by the Supreme Court, letting stand the appellate court's reversal of the contempt citations. As a note, the State of Maryland started its experimental year of opening state courts to electronic coverage on January 1, 1981, and it is still experimenting as of December 1982.

Graham V. People, 302 P. 2d 737
(Colorado 1956)

This case involved a murder charge against one Gilbert Graham who admitted placing a bomb on an airplane to collect \$35,000 in life insurance on his mother. Forty-four persons were killed in the resulting midair explosion.²⁴⁸

A Colorado District Judge permitted radio stations to make tape recordings and television reporters to take sound on film, despite the express request of the accused that television be excluded.²⁴⁹

After the trial, the Colorado Supreme Court impressed by the performance of hundreds of media representatives

present at the trial, broadly evaluated Canon 35 and added its own rule that television coverage of court proceedings be at the discretion of the trial judge.²⁵⁰

After six days of hearings and photographic demonstrations, Justice Otto Moore of the Colorado Supreme Court could find no reason to bar modern camera equipment from the courtroom. The judge said, "That which is carried out with dignity will not become undignified because more people may be permitted to see and hear."²⁵¹

Thus, Colorado became the first State to officially and legally recognize and follow a revised Canon 35. Even when other state courts abandoned courtroom photography following the U.S. Supreme Court decision in *Estes V. Texas*, Colorado continued to follow its "Rule 35".²⁵²

Irvin V. Dowd (336 U.S. 717, 1961)

The U.S. Supreme Court for the first time ruled on the question whether pre-trial publicity created by media reports (television, radio, newspapers) can create a wave of public passion leading to a mistrial for the accused before an impartial jury.

Critics opposing electronic media coverage of court proceedings, and against all types of media personnel in courtrooms, always cited pretrial publicity as the cause of mistrials. While addressing itself to this particular case, the Supreme Court for the first time reversed a state criminal conviction solely on the grounds that pre-trial

publicity had created "so huge a wave of public passion" that a fair trial for the accused before an impartial jury became impossible.²⁵³

On April 8, 1955, Leslie Irvin was arrested in Indiana on suspicion of burglary and issuing bad checks. Some days later, the Vanderburgh County prosecutor and Evansville police officials issued press releases stating that Irvin had confessed to six murders committed between 1954 and March 1955 in the Evansville area. They had received wide coverage in the local media.

Irvin, indicted for one of the murders, successfully sought a change of venue from Vanderburgh County, and the court sent the case to adjoining Gibson County.

Media coverage of the case both radio, television, and print "suggested" prejudicial publicity. Curbstone opinions of guilt and punishment were solicited, recorded and later broadcast. Various newspaper articles and cartoons proclaimed details of the defendant's background and referred to crimes he had committed as a juvenile, and to his convictions for arson 20 years earlier. He was depicted by the media as an AWOL soldier, burglar and parole violator. The police were no less guilty as they referred to the accused as "Mad Dog Irvin," a sane man but without remorse or conscience.²⁵⁴

Voir dire examination of the jury lasted two weeks. Out of 430 persons, the court excused 268 because of having fixed opinions about Irvin's guilt. Eight of the 12

ultimately picked said they thought Irvin was guilty and that they were familiar with the facts and circumstances of the case. Irvin was convicted and sentenced to death. But after a series of appeals, the case reached the Supreme Court.

The Court concluded that Irvin had not been given a fair and impartial trial, that he should have been granted a second change of venue and that, in the circumstances of the case, it was the duty of the United States Court of Appeals to evaluate independently the voir dire testimony of the jurors.²⁵⁵

Justice Clark, who wrote the majority opinion, remanded the case to lower courts for retrial, and highlighted certain principles regarding jurors and pretrial publicity. He stated that it is not required that jurors be totally ignorant of the facts and issues involved in a case. He wrote:

To hold that the mere existence of any pre-conceived notion as to the guilt or innocence of an accused is sufficient to rebut the prescription of a prospective juror's impartiality would be to establish an impossible standard.²⁵⁶

Justice Clark also wrote that the facts of the case showed a clear pattern of prejudice. The patterns of the daily popular news media were "singularly revealing," and coverage had been such that prejudice in the minds of jurors was difficult to remove.²⁵⁷

The Justice continued:

It would be difficult to say that each would exclude this preconception of guilt from his

deliberations. The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man.²⁵⁸

Clark also stressed the responsibility of the press in covering a case in which a man's life is at stake. While emphasizing the need for an "undisturbed atmosphere" the Justice wrote:

With his life at stake, it is not requiring too much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion and be a jury other than one in which two thirds of the members admit, before hearing any testimony, to possessing a belief in his guilt.²⁵⁹

Justice Felix Frankfurter was against the media in his concurring opinion. He deplored the miscarriage of justice caused by trial by the news media. Justice Frankfurter wrote:

The Court has not yet decided that the fair administration of justice must be subordinated to another safeguard of the constitutional system -- Freedom of the Press, properly conceived.²⁶⁰

The Irvin case and the subsequent judgment by the Supreme Court provided attorneys, various bar groups, and critics of the media a big weapon against the media's presence in court proceedings during both pretrial hearings and actual trials.²⁶¹

In addition, the case provided defense attorneys a useful precedent for appealing lower court convictions of their clients. Lower federal and state courts, in attempting to follow this case, also have presumed bias on the part of jurors in cases where publicity had been widespread and particularly vindictive.²⁶²

As for Irwin himself, he was later retried by the State in a less emotional atmosphere, found guilty and sentenced to life imprisonment.

Rideau V. Louisiana (373 U.S. 723, 1963)

Wilbert Rideau, a 1961 murder suspect arrested in Lake Charles, Louisiana, was taken to the Calcasien Parish jail without any advice of his rights about making statements or having a lawyer. On the night of arrest Rideau allegedly confessed the crimes, still without advice of his rights and without counsel. Five days later, he was interviewed by the FBI agents and confessed again.

The following morning, Rideau was interviewed again by the Sheriff, FBI agents, and two policemen. The interview was recorded and later televised. It was claimed the case involved a 20 minute television film shown three times to viewing audiences estimated at 24,000 and 53,000 in a parish of 150,000 persons.²⁶³ Rideau was subsequently charged, convicted of murder, and sentenced to death.

Rideau's lawyers appealed the decision. They argued that the defense motion for a charge was improperly denied, that specific jurors were wrongly allowed to be seated, and that television broadcasts made a fair trial impossible. Three jurors admitted seeing the televised interview at least once; but all jurors had testified they could set aside their opinions, and judge the case on the evidence alone.

The Louisiana State Supreme Court upheld the conviction on the grounds that Rideau failed to prove sufficient prejudice to warrant a mistrial. However, the U.S. Supreme Court, in a 7-to-2 decision, reversed Rideau's conviction.

Justice Stewart, who delivered the opinion of the court, wrote that the "Kangaroo court proceedings in this case involved a more subtle but no less real deprivation of the due process of law."²⁶⁴

Justice Stewart stated:

For anyone who has ever watched television, the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense was Rideau's trial . . . at which he pleaded guilty to murder. Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.²⁶⁵

Justice Clark, with whom Justice Harlan joins, dissenting said:

I agree fully with the Court that one is deprived of due process of law when he is tried in an environment so permeated with hostility that judicial proceedings can be but a hollow formality.²⁶⁶

The Justice went on that the principles established in this case deviated from the principles established in *Irvin V. Dowd*. He argued that unless the adverse publicity is shown by the record to have fatally infected the trial, there is simply no basis for the court's inference that the publicity, epitomized by the televised interview, called up some informal and illicit analogy to making petitioner's trial a meaningless formality.²⁶⁷

Sheppard V. Maxwell (384 U.S. 333, 1966)

Marilyn Sheppard, wife of Dr. Sam Sheppard, was bludgeoned to death in their home in a Cleveland, Ohio suburb. From the outset officials focused suspicion on Sheppard because of the different accounts of what he said happened the day of the murder. After a search of the house and premises on the morning of the tragedy, the coroner was reported to have told his men, "Well it is evident the doctor did this, so let's go get the confession out of him."²⁶⁸

This case became one of the most highly publicized trials in history. Sheppard was formally accused of the crime and pleaded not guilty. The media thrust itself into the investigation of the crime and the trial. Massive coverage, bedlam at the trial, and prejudicial comments by public officials were held to have denied the defendant a fair trial.²⁶⁹

The news media played up Sheppard's refusal to take a lie detector test and "the protective ring" thrown up by his family. Front page newspaper headlines announced on the same day that "Doctor Balks at Lie Test; Retells Story." A column opposite that story had an "exclusive" interview with Sheppard headlined: "Loved My Wife - She Loved Me, Sheppard Tells Newspaper Reporters". The next day another story reported Sheppard had "again late yesterday refused to take a lie detector test" and quoted an Assistant County Attorney as saying that ". . . at the end of a nine-hour questioning

of Dr. Sheppard, I felt he was now ruling a test out completely."²⁷⁰

Radio and television broadcasts of the developments in the murder investigation offered coverage similar to that of print "in condemning the suspect as the 'killer'."²⁷¹

The Cleveland Press, the largest paper in Ohio at that time with a circulations of 310,000, used the Sheppard case as its lead, page-one story on each of the 23 days before Sheppard's arrest. For three days it ran front-page editorials on the case. On at least three occasions, news of the murder and subsequent events consumed nearly all of page one and several inside pages.²⁷²

Newsweek magazine described the salient aspects of the Sheppard case:

Sensational or sociology, the story of Dr. Sam Sheppard has consumed an astonishing amount of newsprint. One third to one half of the nation's newspapers were front paging daily developments. The story hit 90 percent of the front pages the day Sheppard was convicted for murder.²⁷³

An inquest was held in a gymnasium on July 20, 1954 attended by several media representatives. Microphone, camera, and television cable wires covered the floor of the gymnasium. Microphones were placed on the coroner's seat and the witness stand. Additional television lights were at strategic locations.²⁷⁴

Sheppard was arrested July 30, on a charge of murder. The publicity described earlier continued until his indictment August 17.

It was with this background that the case came to trial. The first row in the courtroom was occupied by representatives of radio and television stations, and the second and third rows by reporters from out-of-town and local newspapers, and magazines. Newscasts and special features were aired regularly about the trial. Station WSRS even was permitted to set up broadcasting facilities on the third floor of the courthouse next door to the jury room, where the jury rested during recesses in the trial and deliberated. Newscasts were made from this room throughout the trial, and while the jury reached its verdict. Hence it was no surprise when every juror, except one, testified at voir dire to have heard news broadcasts, seen TV films, or read about the case in the newspapers.²⁷⁵

The intense publicity given the Sheppard case in the news media continued unabated while the trial was in progress. On the sidewalk and steps in front of the courthouse, television and newsreel cameras were used to take pictures of the participants in the trial, including the jury and the judge.²⁷⁶

A debate among media representatives was staged and broadcast live over WHK radio station in Cleveland. The debate contained assertions that Sheppard had admitted his guilt by hiring a prominent criminal lawyer. It also was made known in one of WHK radio broadcasts about the case that a woman under arrest in New York City for robbery had admitted being Sheppard's mistress and had borne him a

child. Two jurors later admitted in open court that they had heard the broadcast. Sheppard's counsel objected to such broadcasts, but trial Judge Edward Blythin, the presiding judge, denied the motion saying that such broadcasts would have no effect on the jury's judgment.²⁷⁷

The Common Pleas Court convicted Sheppard of murder in 1954. His conviction was affirmed by the Court of Appeals at Cuyahoga County, Ohio, and later by the Ohio Supreme Court. However, the Supreme Court of the United States reversed the judgment in 1966 on grounds that Sheppard did not receive a fair trial. A retrial was ordered and Sheppard was acquitted.

Justice Clark delivered the opinion of the court and stated that the legal procedures in a criminal case included a requirement that the jury's verdict be based on evidence received in open court, not from outside sources. In *Marshall V. United States*, the Court set aside a federal conviction after the jurors were exposed through news accounts, to information not admitted in the trial.²⁷⁸

Justice Clark indicated a bias may have been possible among the jury when he wrote:

The Sheppard jurors were subjected to newspaper, radio and television coverage of the trial while not taking part in the proceedings. They were allowed to go their separate ways outside of the courtroom, without adequate directions not to read or listen to anything concerning the case.²⁷⁹

The Supreme Court Justice wrote that Judge Blythin's arrangements with the media "caused Sheppard to be deprived of that judicial serenity and calm to which he was

entitled." He pointed out that "bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom, hounding most of the participants in the trial, especially Sheppard."²⁸⁰

Justice Clark wrote:

The carnival atmosphere at trial could easily have been avoided since the courtroom and courthouse premises are subject to the control of the court. As we stressed in *Estes*, the presence of the press at judicial proceedings must be limited when it is apparent that the accused might otherwise be prejudiced or disadvantaged. Bearing in mind the massive pretrial publicity, the judge should have adapted stricter rules governing the use of the courtroom by newsmen, as Sheppard's counsel requested.²⁸¹

Although the conduct of the news media was highly deplored and disapproved of in this case by the Chief Justice, he did note that it was the traditional freedom of the media to report about the process of justice. He said:

The principle that justice cannot survive behind walls of silence has long been reflected in the "Anglo-American distrust for secret trials. A responsible press has always been regarded as the hand maiden of effective judicial administration, especially in the criminal field. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism."²⁸²

Michael T. Callahan V. Russell E. Lash

(381 F. Supp. 827 197)

Like the *Estes* and *Sheppard* cases, this case also had excessive media publicity about the defendant which the Indiana State Supreme Court admitted deprived the defendant

of his Sixth Amendment right to a fair trial as demanded by the Due Process Clause of the Fourteenth Amendment.

It also marked the first time a State Supreme Court thoroughly documented numerous situations in which televising court proceedings can cause an unfair trial.²⁸³

Michael Callahan was indicted and found guilty by a jury of the 1961 murder of officer Edward G. Byrne of Marion County, Indiana, and obstructing the sheriff's staff in the perpetration of a burglary. Following judgment and sentencing the State Supreme Court later decided in 1974 to look at the case after denials of numerous petitions by the lower courts.

The court granted a writ of certiorari and ordered the petitioner be discharged from custody based on evidence of facts that the State trial judge did not fulfill his duty to protect petitioner Callahan from the "inherently prejudicial publicity which saturated the community."²⁸⁴

The prejudicial publicity referred to television and print coverage of the case. There was testimony of flashbulbs popping, photographers moving around "behind the jury - behind the judges bench;" television cameras all over the courtroom with intense lights shown on trial participants. Citing *Estes* and *Sheppard* the court concluded that "Petitioner's trial did not comport with the fundamental conception of a fair trial."²⁸⁵

The Court documented situations in which electronic coverage of court proceedings can cause an unfair trial,

some so subtle as to defy detection by the accused or control by the judge, such as:

1. Improperly influencing jurors by emphasizing the notoriety of the trial and affecting their impartial judgment, distracting their attention, making it possible for an unsequestered juror to see selected portions of the testimony reemphasized on television news programs, and improperly influencing potential jurors and this jeopardizing the fairness of new trials;
2. Impairing the testimony of witnesses, as by causing some to be frightened and others to overstate their testimony, generally influencing the testimony of witnesses, and frustrating any separation of witnesses by having any one or more of them watch a preceding witness on television even if they were admonished not to do so;
3. Distracting judges generally and exercising an adverse psychological effect, particularly upon those who are elected; and
4. Imposing pressures upon the defendant and intruding into the confidential attorney-client relationship with the eye of the television camera.²⁸⁶

The court also pointed out in a footnote that televised jurors cannot help but feel the pressures of knowing that friends and neighbors have their eyes upon them. If the community be hostile to an accused, a televised juror, realizing that he must return to neighbors who saw the trial themselves, "may well be led not to hold the balance nice, clear and true between the State and the accused . . .²⁸⁷

Indiana has no court rules or statutes as of the time of writing allowing broadcast coverage of court proceedings.²⁸⁸

Richmond Newspapers et. al. V. Virginia
et. al. (448 U.S. 555, 1980)

The electronic coverage of court proceedings as well as print coverage greatly depends on its legal justifications. In a 1979 decision the Supreme Court in *Gannett V. De Pasquale* (443 U.S. 368, 1979) justified the closure of pretrial proceedings - saying the Sixth Amendment guarantees of a public trial is for the benefit of the defendant alone; and closure of pretrial proceedings is often one of the most effective methods that a trial judge can employ to ensure that the fairness of a trial will not be jeopardized by the dissemination of such information before the trial has even begun.²⁸⁹

The Supreme Court addressed the question of actual trial coverage in the *Richmond Newspapers V. Virginia* case.

Defense attorneys for a defendant who was on trial for murder for the fourth time asked the judge to close trial proceedings from the public and the trial judge ordered the courtrooms closed except to those who would testify in the trial. The Richmond newspapers appealed to the Virginia Supreme Court after a petition to reverse the closure order was denied by the presiding judge, but did not succeed in opening the proceedings. However, the Supreme Court of the United States reversed the order, concluding that the right of the news media and the public to attend criminal trials is guaranteed by the First and Fourteenth Amendment.²⁹⁰

Chief Justice Burger who wrote the opinion of the court, pointed out that dissemination of information to the public guards against the government presenting a one-sided message of its case.

The First Amendment goes beyond protection of the press and self-expression to prohibit the government from limiting the stock of information from which members of the public may deserve.²⁹¹

The Court also examined historical evidence which offered proof that open trials are indeed beneficial to society. A public trial leads to a better understanding of the judicial system and reduces public hostility toward the defendant. Without publicity, all other checks are insufficient; in comparison to publicity, all other checks are of small account, wrote Justice Burger.²⁹²

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CHAPTER II

REVIEW OF LITERATURE

As the conflict between the principles of Free Press and Fair Trial (Free Press here includes the electronic media) drags on, legal scholars and communication specialists have conducted studies in simulated as well as actual environments looking for proofs of both advantages and adverse effects of the media's presence in the courtrooms.

Various studies have examined relationships between jury verdicts and pretrial publicity, trial participants behavior under the presence of cameras in courts and their behavior when the electronic media is barred from the trial proceedings. The scholar's quest for empirical evidence and data have resulted in a large volume of literature pertaining to the Free Press - Fair Trial Controversy in general.

Various bar and media groups have conducted experiments and surveys to explore the impact of electronic coverage on trial participants other than the defendants. The Florida pilot program itself was a type of study and its results were collected in a post-program survey of participants. Although some of the research done was "non-scientific" and

produced limited data, the available data do not support the proposition that, in every case and in all circumstances, electronic coverage creates a significant adverse effect upon the participants in trials, at least not one uniquely associated with electronic coverage as opposed to more traditional forms of coverage.¹

Further research may change the above statement but at present there is no unimpeachable empirical data to support the thesis that the presence of the electronic media interferes with trial proceedings.

The author will report upon some of the studies which emphasize the presence of the electronic media.

Philip Edward Berk Study

Berk at the University of Iowa traced the background and history of Canon 35 and the controversy surrounding it, quoting extensively from the many arguments pro and con.

He established four distinct types of viewpoints toward Canon 35 as applied to the free press - fair trial conflict.

For professional reasons he found that journalists tend to favor "freedom of the press," and lawyers express a strong preference for "fair trial." As for the lay public, with no professional interest to be served, Berk found that persons who had participated in a well-run trial covered properly by the mass media are more sympathetic toward free press. Conversely, antipathy toward the press in general and cameras in particular were expressed frequently by

persons with limited or no experience of court coverage by photographers and electronic media reporters.²

On the strong possibility of significant correlation between experiences and attitudes the researcher used the Q-methodology to confront individuals with a sample of self-referent statements concerning the issue. Each person sorted the statements to indicate which of the statements he felt strongly about and those about which he did not feel strongly. Through the use of factor analysis the researcher was able to indicate the four distinct factors discussed above.³

The Florida Survey

At the conclusion of Florida's experimental year of camera access, the state supreme court commissioned a survey of participants and circuit judges in trials covered by electronic media. The survey is the most extensive measurement ever attempted, and the Florida Supreme Court expressly relied on the results in its deliberations. The court cautioned that "the survey results are nonscientific and reflect only the respondents' attitudes and perceptions."⁴

The Office of the State Courts Administrators distributed questionnaires to witnesses, jurors, attorneys, and court personnel. Two-thirds of those in each category responded. The total of respondents was 1,349, and placed the error at slightly under two percent. "A sample of 250 allows one to predict the population characteristics with an

error estimate of plus or minus 3 percent. Quadrupling the sample to 1,000 respondents would increase the accuracy to slightly under 2 percent."⁵

The Florida results showed that court personnel and attorneys generally were less favorable toward cameras than witnesses and jurors. Forty percent of the attorneys thought the camera made other attorneys "nervous," while a third also rejected the opinion that attorneys were more attentive. On the effects of photographic equipment on jurors ability to judge the truthfulness of a witness, three to eight percent said they were somewhat hindered, four to eight percent reported they were helped. Among witnesses, more than half reported that the equipment made them self-conscious. But in another response more than a third said they felt responsible for their actions because of the camera's presence.⁶

In direct comparison with the print media, television fared no better and no worse with the respondents. Witnesses were asked if they were "concerned that someone may try to harm them because of their appearance as a witness being on television?" About 29 percent said yes, and 28 percent said they feared the same danger from being in the newspapers. When jurors were asked if they had been concerned that people would know they were serving on a particular jury and try to influence their decision as a result of the newspaper coverage of the trial, 14 percent

responded negatively, and 18 percent responded positively if it was on television.⁷

The Conference of Circuit judges also surveyed its 286 members with 155 responding. Results showed a slight plurality of the responding judges favored the pilot program with 36 percent positive, 28 percent negative, and 36 percent neutral. However, comments that accompanied the survey responses showed that the neutrals generally made favorable comments.⁸

In addition, an overwhelming majority of judges believed that jurors "(65 to 3), witnesses (68 to 9), and lawyers (84 to 2), were not swayed, impaired, or failed to conduct themselves in accord with the dictates of law when cameras were present."⁹

In another survey conducted by a circuit judge and three university professors, of the Circuit and County court judges, similar results of judges favoring the presence of cameras in court was recorded. The survey had 130 responses from 286 circuit judges and 101 responses from 181 county judges. The results were 87.8 percent of the circuit judges responding perceived no serious trial disruptions while only 12.2 percent perceived problems, thereby indicating the circuit judges favorable reactions to the presence of cameras.¹⁰

A substantial majority of the judges also felt that jurors (36 to 11), were not distracted.¹¹

They showed that witnesses (32 to 15), and defendants (38 to 9), cannot be easily distracted nor adversely affected by the presence of cameras in courtrooms.¹²

On the matter of lawyers playing to the camera and/or grandstanding, the judges (36 to 15), pointed out that is not enough to keep cameras out of the courts.¹³

The researchers who conducted the survey concluded that:

Most judges who reject cameras in the courtroom do so on the philosophical grounds that justices must satisfy the appearance of justice. They believe that our system of law must prevent even the possibility of unfairness to a defendant. They are not yet convinced that cameras do not have a prejudicial effect on jurors and witnesses.¹⁴

Overall camera access scored impressively high. One question asked in all surveys was: "Would you favor or oppose allowing television, photographic, or radio coverage in the courtroom?" Those responding favorably or with no opinion were 73 percent of the jurors, 64 percent of the witnesses, 58 percent of the court personnel including judges, and 58 percent of the attorneys.¹⁵

The results of Florida's pilot program illustrate vividly that cameras in the courtroom have undergone various tests in the minds and opinions of the trial participants and have withstood a year's scrutiny. Critics response to these statistics blames it for being unreliable and unscientific. But most judges that have presided over televised trials have been favorable to it and had expressed support on its use. A critic has it that surveys measure only

attitudes and perceptions not behavior. He suggested that witnesses and jurors might "subconsciously" be bothered or distracted by a camera.¹⁶

James L. Hoyt

A remark made by two U.S. Supreme Court Justices suggesting that during televised trials witnesses memories may fail and the accuracy of their statements may diminish prompted Dr. James Hoyt of the University of Wisconsin to experimentally test such speculation. He sought to determine if individuals were affected by the awareness that they are being televised.

Subjects were 36 volunteers enrolled in a "media and society" class at the professor's university.

The study simulated some of the pressures placed on witnesses in a courtroom setting while at the same time maintaining experimental control so that results could be meaningfully analyzed. Subjects were shown a film containing detailed information and were later interviewed about the contents of the film. While answering questions, subjects were either facing a conspicuous television camera purportedly recording their answers and were told it would be viewed by a large audience; in the other setting an unobtrusive camera hidden behind a mirror was used so it would not be seen from the respondents' chair. In the unobtrusive camera condition setting, the experimenter included as a final part of instructions that the video

tapes of the recording will be used as part of a follow-up study which would be viewed by a larger number of people. This was done to add to the realism of the setting, causing the participants to actually believe that their performance would be seen by others.

In the unobtrusive camera condition the same instructions were given except they reported there was a television camera operating behind the two-way mirror placed in front of the respondents, but in reality there was none at all. The awareness of a hidden camera was created because the experimenter felt it was important to create the same belief that even though there was no camera, just as in an actual courtroom situation, the participants should be aware that their answers would be widely circulated even though not electronically recorded in the courtroom.

Each subject was later asked six specific questions about the content of the film. The questions and answers were recorded for subsequent analysis on an audio cassette recorder hidden from the subjects' view. The questions were developed and pre-tested for clarity, precision, and comprehensiveness and all testing was completed within four days to minimize chances of discussion among participants who were instructed not to discuss the study with their classmates.

Coders carefully listened to the audio tapes of the answers, coding a number of items, both in terms of speech characteristics and contents such as total time used in

talking, time used from end of question until start of answers and the number of times each asked for clarification.

The experimenter said those subjects who faced the obtrusive television camera included more correct information in their answers ($F = 4.63$, $df = 2133$, $p < .025$).¹⁷ The mean amount of correct information contained in all six answers for those in the obtrusive camera condition was 20.17, compared to 16.33 for those in the hidden camera condition and 16.83 for those who faced no television camera.¹⁸

On the length of answers, subjects in the obtrusive camera condition behaved differently. They spoke for a longer time in answering the questions than did the subjects in other settings. ($F = 5.35$, $df = 2133$, $p < .01$). Their mean total answer length was 36.50 seconds, compared to 28.21 seconds for those facing the hidden camera and 29.71 seconds for those not confronting a camera at all.¹⁹

Hoyt found no significant differences in the respondents' verbal behavior when confronted with a hidden television camera as compared to when no camera was present.²⁰ Hence the assumption that when faced by a television camera, person's memories may fail, they may talk differently or talk slowly was not supported.²¹ He wrote:

If the television camera was hidden from the sight of the witness, the presence of the camera seemed to be irrelevant. It was as if when the camera was out of sight it was also out of their thoughts and concerns.²²

Hoyt also pointed out that those subjects who faced the obtrusive television camera gave more correct information in their answers and spoke for a longer period of time in answering their questions than did those in the other settings.²³ He said:

In a closely related measure, subjects in the obtrusive camera condition also used more words in composing their answers than did subjects in the other conditions ($F = 4.96$, $df = 2123$, $p < .025$). The mean number of words for those facing the obvious camera was 70.25, for those facing the hidden camera was 60.50, and for those not facing a camera was 56.17 words.²⁴

Hoyt noted that people "apparently" feel more compelled to speak more and to pause less when they are conspicuously aware they are being televised. He stated that the longer answers given by those in front of the cameras did not contain additional incorrect information. They contained significantly more correct information directly relevant to the questions. It is this finding he said that has the broadest implications for courtroom coverage by television.²⁵

Hoyt concluded that his data in this context indicates that far from being a danger and a potential hindrance to a fair trial, television cameras can lead to a fairer trial because the witness could be expected to offer more complete and correct information in response to the questions from the various attorneys and both sides should be able to benefit from the increased information on which the court's decision could be reached.²⁶

The researcher however cautioned that this study was only an experimental approximation of some of the key aspects of the courtroom environment and not a trial itself. He said "What the current study did was to provide some original systematic data bearing on the significant overall question of the effects of camera coverage of courtroom trials."²⁷

Shores Donald Lewis, Jr., Study

Shores Donald Lewis in his doctoral dissertation looked into the effects of courtroom cameras on verbal behavior and specifically investigated the effects of the presence of a television camera on the content of trial witness testimony. His study also investigated possible effects of the television camera's presence on the ability of witnesses to present cogent testimony.²⁸

The researcher embarked on his scientific study by obtaining testimony from 58 college - aged subjects during a simulated trial in an actual courtroom. The testimony was analyzed to determine

the type-token ratio, mean word length, average word frequency of the first 100 words of each subject's testimony, the total adjusted length of the testimony, and the ratio of trivial words used to the total number of words used by each subject.²⁹

However, significant ($p < .05$) main effects were found between vocabulary and average word frequency ($p < .04$), and between communication apprehension and total adjusted testimony ($p < .001$). A significant interaction effect ($p < .04$)

existed between the camera situation and communication apprehension for the average word frequency of subjects.³⁰

The camera situation, communication apprehension scores, and vocabulary scores were his three independent variables. Through analysis of covariance the researcher found no statistically significant differences among the dependent variables between subjects testifying without the presence of cameras.³¹

A self report instrument completed by subjects after testifying in the courtroom indicated "no-camera subjects perceived more distractions (10 of 26) in the courtroom while testifying than camera condition subjects (9 of 32)."³² However, four individuals reported the television camera as a source of distraction which led the researcher to conclude:

The television camera alone has no significant effect on the lexical diversity of testimony.

An interaction of the camera situation with an individual's personal level of communication apprehension significantly affects that person's pattern of repeating words while testifying in the courtroom.

A person's normal level of communication apprehension significantly affects his/her length of testimony. Individual's possessing higher levels of communication apprehension presented longer testimony than individuals with lower communication apprehension scores.³³

In simpler terms, the researcher found that a camera has no noticeable effect on the testimony of a trial participant. The way and manner testimony is given is not

slowed nor quickened by the presence of camera but is determined by an individual's normal level of communication.

Gerald Kline and Paul Jess

Kline, at the University of Minnesota, and Jess from South Dakota State University, hypothesized that certain news stories carried by both print and the electronic media affect trial participants, particularly the jury, in a civil case.

Subjects were 48 male sophomore students divided into two groups and equated for college entrance scores and age. Variables were based on "prejudicial" and "non-prejudicial" versions of a traffic injury represented as a story run in the University daily newspaper and inserted in a simulated newscast. The prejudicial element involved a deplorable driving record and arrests for reckless, drunken driving and leaving the scene of an accident. The control group was exposed to non-prejudicial news stories.

From the groups, four, six-man juries were selected through the voir dire proceeding and then sat through a mock trial.

It was found that in each of the four trials, at least one member in each of the "prejudicial - element" juries made reference to the prejudicial information contained in the news stories.³⁴

The researchers suggested that the impact of a judge's instructions to the jury needed further exploration.

They also pointed out the drawbacks of the experiment such as the potency and nature of the trial arguments which were beyond their control. There is also the effects of simulated situation which can and often strained the linkage between experiment and reality.³⁵

Netteburg Kermit Lyol Study

Lyol wished to find out if the televising of court proceedings engender hostility and incitement within the community against the defendant and possibly the court system.

The researcher began to fill that void by examining responses to televised trials in two Wisconsin communities, one of which had had a great deal of court televising and another which had had little exposure to the use of cameras in its courtrooms.

His general hypothesis was that respondents in the community with the greater televising activity would exhibit more of the prejudicial attributes of television causing mistrials and contributing to community incitement than respondents in the community with little exposure to television in their courtrooms.³⁶

Sixty one separate questions or scales were analyzed to test whether the arguments about community incitement and television causing mistrials apply to 1980 courts.

The researcher found that for 34 of those measures 56 percent showed no significant difference existed between the

two communities, and for another 18 of these measures 29 percent showed the significant difference was opposite the hypothesis about televising court trials. He also reported that in only nine instances or 15 percent did findings give significant support to the argument that televising court proceedings contributes to community incitement causing mistrials.³⁷

Lyol concluded from his data that using community incitement rationale as a continuing reason for banning cameras from courtrooms is unjust and baseless.³⁸

Warner Carl Hartenberger

Hartenberger evaluated the controversy and suggested a resolution consistent with judicial rulings and media contentions by adhering to a research plan that included:

1. The nature and development of the constitutional principles in conflict.
2. An examination of selected trial and congressional proceedings considered landmark cases in the development of the controversy.
3. A review of the development, and present day use, of legislative, judicial and self-imposed factors of restraint.³⁹

Using these bases, Hartenberger found that the exclusion of broadcast equipment from the courtrooms is an abridgement of the First Amendment rights and cannot be supported legally, historically, or ethically. He pointed

out that in the face of a conflict between the Constitutional rights of the media and those of the defendant, the latter's rights are given precedence.⁴⁰

Hartenberger concluded that as the role of the broadcast media becomes more entrenched in the every day activities of the people, a change in emphasis may occur that will lead the court to embrace the media as legitimate partners in trial proceedings.⁴¹

Rita James Simon

Simon looked for the effects of pretrial news reports carried by both print and electronic media on a jury's verdict. Simon also wanted to learn if a juror having seen a TV newscast or read a news report about a defendant can put that information aside and reach a verdict solely on the evidence he hears in court. In an attempt to answer these questions, Simon embarked on a pilot study involving a fictional trial.

The researcher and her colleagues wrote two newspaper accounts of the same murder, one as it would be played by a conservative paper like the New York Times, the other as the sensational tabloids would handle it. The conservative story carried a sober account of the murder, with headlines of modest type size. The sensational stories headlines were of much larger type.

Subjects were drawn randomly from the list of registered voters at Champaign and Urbana, Illinois. Sensational

news stories were given to 51 of the subjects and conservative clippings to 56. A verdict on the guilt or innocence was sought by a ballot.

The experiment indicated that people were influenced by what they read and that sensational news coverage had more influence on the guilt verdict than sober accounts.⁴²

The researchers found that important changes occurred when subjects listened to a tape-recording of the "trial" of the accused that began with an admonition by the judge to lay aside any prior opinion and ideas on the case. Jurors again were asked to arrive at individual decisions on the guilt or innocence of the accused. This time most of the jurors changed their mind and found the defendant innocent.⁴³

The researcher added a note of warning that the subjects used in the study were not representative of the general population, and not typical of the average jury. They were primarily middle class subjects. About two-thirds of them were business people with a college education.

Barber Susanna Ruth Study

The study compared the U.S. Supreme Court's decision in Chandler V. Florida (1981) with the conclusions of historical, legal, and social scientific literature on the impact of cameras on the trial process and its participants.⁴⁴

Ruth found that historical research shows that the American Bar Association rationale in adopting Canon 35

should be viewed skeptically since cameramen were not solely responsible for disrupting or prejudicing the Hauptmann trial.

Many cases such as those of Scopes, Hauptmann, Zamora, Chandler and Granger, Herman and Bundy, were intrinsically sensational and newsworthy by virtue of the issues and or people involved in the litigation.⁴⁵

The study also pointed out that empirical research examined by the Supreme Court showed no significant correlation between the presence of cameras at a trial and perceived prejudicial behavior or attitudes on the part of jurors, witnesses, judges, or attorneys. But the court relied on the relevant social science research only to a limited degree frequently circumscribing its decision with reservations about the "scientific nature of the data, the validity of its conclusions, and the pervasiveness of its implications."⁴⁶

The researcher said a double standard may have been applied to broadcast versus print media trial coverage because courts are less prompt to reprimand print than broadcast media for transgressions such as the publication of contemptuous materials.⁴⁷

LawPoll Study

LawPoll posed to its respondents seven conditions that have been or might be used with courtroom cameras. Lawyers who approved of televised proceedings were asked whether or not each of the conditions should be required, while those

who disapproved of TV in courtrooms were queried as to whether the fulfillment of the conditions would make them more likely to approve.

They found that among the advocates of TV, the key prerequisite is the right of the presiding judge to terminate it if it is found to be distracting (92 percent). The emphasis on the discretion of judges was reinforced by 63 percent who felt that prior permission of the judge should be a requirement. Counsel's consent was less of a factor, as 46 percent indicated that consent of both attorneys should be a prerequisite.⁴⁸

On balance the protection of the defense through its consent was judged more necessary (44 percent) than the rights of the prosecution (25 percent). There was relatively little endorsement of the need to secure the consent of witnesses (25 percent) and even less for limiting TV cameras to appellate courts.⁴⁹

The situation was rather different among the opponents of TV in the courts, as 53 percent of this group said it would be more likely to endorse cameras if they were limited to appellate courts. For each of the other conditions, majorities ranging from 56 percent (judge's right to terminate) to 92 percent (consent of the prosecution) indicated that they would be unswayed in their opposition to cameras in the court.⁵⁰

The positive and negative sides of televised proceedings were presented in the form of six statements to which

respondents could agree or disagree. Three of the statements described reasons permitting televisions in the courts, and three suggested why it would be inappropriate.

Complementing the findings in the preceding section, respondents tended to accept the antitelevision statements and reject the favorable ones. By a 75-23 percent margin, they agreed that television would tend to distract witnesses. Seventy percent believe that television would be used to show the more sensational aspects of a trial only, and 64 percent feel it would encourage lawyer and judicial grandstanding.⁵¹

While the major concern of opponents of TV is its likely effect on witnesses, it is generally agreed that the problem cannot be solved merely by allowing witnesses the right not be televised, as lawyers appear to believe that many witnesses will be distracted by the cameras without realizing it.

There was only minority agreement with the positive aspects of television, as 37 percent accepted the contention that it would enhance the public concept of our system of justice, and 33 percent believed that citizens are entitled to see our courts in operation. The final statement, suggesting that barring television would be discriminatory, elicited only 20 percent support.⁵²

ENDNOTES

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³⁹Werner Karl Hartenberger, "Cameras in the Courtroom: The Role of the Broadcast Media in the Free Press-Fair Trial Controversy," Dissertation Abstract International, Vol. 30 (1966), p. 266-A.

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⁴⁴Barber, Susanna Ruth, "Chandler V. Florida: A Social, Scientific, Legal and Historical Evaluation of Cameras in the Courtroom," Dissertation Abstracts International, Vol. 42 (October 1982), p. 4190-A.

⁴⁵Ibid., pp. 4190-4191A.

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⁵²Ibid., p. 1308.

CHAPTER III

METHODOLOGY AND DESIGN

Kerlinger in Foundations of Behavioral Research wrote about the adequacy of research design and methodology:

An Investigator must carefully scrutinize the technical adequacy of the methods, the measurements, and the statistics. We face here the obvious, but too easily overlooked, fact that adequacy of interpretation is dependent on each link in the methodological chain as well as the appropriateness of each link to the research problem.¹

Since the over-all purpose of the study is to obtain attitudes of broadcast editors and lawyers in the state of Oklahoma towards the issue of Cameras in Courtrooms, the questions to be tested are: Are there differences between the attitudes of broadcast editors and attorneys at law towards the issue of television cameras in the courtroom? Is there a relation between one's role and one's attitude towards cameras in the courtroom? Do the broadcast editors as a group favor the presence of cameras in courtroom? Do the lawyers as a group favor the presence of cameras in courtroom? Does the length of time served as an editor make a difference in one's attitude towards the presence of cameras?

Answers to these questions are sought in the belief they will be of value to broadcasting journalism and to the

bar. The study may produce information which could lead to acceptable and effective use of cameras in courtrooms.

Shaw and Wright stated the significance of a study of attitudes. Attitudes significantly influence Man's response to cultural products, to other persons, and to groups of persons--to the extent that principle governing attitudes are known, they may be used to manipulate the individual's reactions to relevant objects.²

Statement of Hypotheses

Hypotheses are important and indispensable tools of scientific research. They are powerful tools for the advancement of knowledge because they enable man to get outside himself.³ Kerlinger, during the process of emphasizing the importance of hypotheses to a research experiment, also laid down criteria for what he calls "good" hypotheses. He stressed that they must be statements about the relations between variables and also must carry clear implications for testing the stated relations.⁴ In other words, these criteria mean that hypothesis statements contain two or more variables that are measurable or potentially measurable and also specify how the variables are related.

This study is designed to determine if significant differences exist between broadcast editors and attorneys at law in their attitudes towards cameras in courtrooms.

Null Hypotheses

The null hypotheses statements developed from the research questions are:

1. There is no significant difference between editors and attorneys (prosecutors and defense) in their attitude towards electronic coverage of court trials.
2. There is no significant difference between defense attorneys and prosecuting attorneys in their attitude towards electronic coverage of court trials.
3. There is no significant difference between editors and prosecutors in their attitude towards the effects of publicity on the court trials.
4. There is no significant difference between editors and attorneys (prosecution and defense) in their attitude towards the media's rights to inform the public - information rights.
5. There is no significant difference between editors and attorneys (prosecution and defense) in their attitude towards the individual rights.
6. There is no significant difference between broadcast editors and defense attorneys in their attitudes that electronic coverage of court trials influences the court's decisions.
7. There is no significant difference between editors and attorneys (prosecution and defense) in their attitude towards media rights.

All broadcasting editors of all commercial television stations in the State of Oklahoma were sent questionnaires. The names of attorneys who were sent questionnaires were randomly selected from the Martindal Hubbel Law Directory.

Since the editor in the news department of a broadcast station is ultimately responsible for the content of his broadcast, and, hence, decides what will be aired, the writer was concerned with this person's attitudes.

Selection of Opinionnaire Items

The first step taken in construction of an attitude scale was to obtain attitude statements that are widely representative of the issue.⁵ The broad criterion of "variable representativeness" stressed by Kerlinger must be kept in mind when selecting items. Variable representativeness means the items as a whole should be representative of the topic--the electronic coverage of court trials--and encompass all aspects of the controversy.

A 20-item opinionnaire was formulated after a review of court cases, journal articles and books on the issue. These items were pretested for their consistency of measurement and two with low discriminatory power were eliminated.

The remaining 18 items yielded a reliability coefficient of .80 following a pretest conducted among subjects on the Oklahoma State University campus.

Classification of Items

The 18 items of the opinionnaire were separated into five categories of news effects. They were Publicity effects, Information function, Individual rights, Media influence and Media rights.

Four items in the opinionnaire dealt with the issue of publicity effects. They are items 1, 2, 5 and 7:

Item 1: The presumption that television coverage of courtroom proceedings is biased and prejudicial is based on conjecture rather than fact.

Item 2: Previous causes of sensational publicity justify banning electronic media coverage of courtroom proceedings.

Item 5: Television coverage of a trial singles out the defendant and adversely prejudices his case.

Item 7: Witnesses are reluctant to testify because of fears of publicity created by television coverage.

Two items dealt with the information function. These are items 3 and 4:

Item 3: Television coverage of court trials serves to allay public fears and dispel rumors during trials, and

Item 4: Television coverage of court proceedings helps educate the public on what happens in a courtroom.

Five items dealt with individual rights. They are items 6, 8, 9, 10, and 17:

Item 6: Television coverage reinforces the principle that a defendant is innocent until proven guilty.

Item 8: Television coverage of trials serves the cause of justice in motivating witnesses to come forward to testify.

Item 9: Television coverage of a trial denies the defendant a fair trial.

Item 10: Fair trials are possible without placing restraints on television coverage.

Item 17: Television coverage of a trial provides a more balanced and complete account of a court trial than any other media.

Four items deal with media influence. They are items 11, 12, 13, and 18:

Item 11: Television coverage of courtroom proceedings has no significant influence on jurors as often claimed.

Item 12: The presence of television cameras in the courtroom influences jurors by emphasizing the notoriety of the trial.

Item 13: Both defense and prosecuting attorneys tend to show off for television cameras rather than concentrate on the case.

Item 18: Television coverage of a trial over

dramatizes and gives the public a wrong impression of what actually takes place in a trial.

Three items dealt with media rights. They are items 14, 15, and 16.

Item 14: Television coverage of trials should be banned.

Item 15: Barring television cameras from the courtrooms violates television's First Amendment rights.

Item 16: Television should be granted unlimited access to all judicial proceedings.

Variables and Operational Definition

Attitudes of broadcast editors and attorneys (prosecutors and defense) towards the issue of television cameras in courtrooms is the dependent variable. The more positive the attitude is toward television cameras in courtrooms, the more negative the attitude is towards its ban.

An attitude has been defined as: "an enduring system of positive or negative evaluations, emotional feelings, and pro or con tendencies with respect to a social object."⁶

Thurstone also provides a physiological approach to defining the term "attitude." He defined it as the degree of positive or negative effect associated with some "Psychological Object."⁷

Thurstone means any phrase, any symbol, slogan, person, institution, ideal or idea toward which people can differ with respect to positive or negative effect.

To understand better the term "attitude", the following are general characteristics said to be possessed by attitudes.

Attitudes are based upon evaluation concepts regarding characteristics of the referent object and give rise to motivated behavior.

Attitudes are learned, rather than being innate or a result of constitutional development and maturation.

Attitudes possess varying degrees of interrelatedness to one another.

Attitudes are relatively stable and enduring.⁸

In this study, attitudes towards the controversy of having television cameras in courtrooms or not means the inclination to favor television coverage of court trials or not; and the extent to which the respondents look favorably upon the presence of television cameras in courtrooms.

Methodology

The methodology of this study centered on the 18-item opinionnaire constructed on a five point Likert rating scale. The scale, developed by Rensis Likert in 1932, comprises a set of attitude items which are considered of approximately equal attitude value. As in all attitude scales, the purpose of the Likert scale, otherwise known as

the "Summated rating scale," is to place an individual somewhere on an agreement continuum for the attitude in question.⁹ To each of the items presented, subjects respond with degrees of agreement. Each of the items in the scale were characterized by five degrees of response: (a) strongly agree, (b) agree, (c) neutral, (d) disagree, and (e) strongly disagree. The answers were scored so that the most favorable response was given the highest score (5), and the least favorable, the lowest score (1). A score of 3 stands for neutral. This type of scale ratings gives greater variance.

The Likert scale was chosen because of certain inherent advantages it is known to possess. The scale gives more intensity of attitude expression. Respondents can use any one of five categories: Strongly agree, agree, undecided (neutral), disagree, or strongly disagree. Because subjects can agree or disagree strongly, greater variance results.¹⁰

Another advantage of this rating system is that one item presumably is the same as any other item in attitude value.¹¹ The individual responding to items are scaled; and the scaling comes through sums of the individual's responses.

Likert scales with less than 12 items have even yielded high reliability coefficients. Likert, himself, has acclaimed the method of summated ratings simple and easy to apply.¹²

A type 1 two-factor mixed design with repeated measures on one factor was used to analyze the data.

The type 1 design frequently is called upon in communication research in which different classes of people are asked to respond or rate different aspects of a mass media unit.¹³ Type 1 is called a mixed design because the same respondents are asked to rate more than one aspect of a stimulus. Hence the repeated measures on one factor.¹⁴

Due to the unequalness of the data and method of research study (universe over sample) the type I two-factor mixed design was used in analyzing the data.

Conduct of Survey

The writer directed a mail out to each of the 19 television broadcast editors in Oklahoma and to 79 attorneys (both prosecutors and defense) in Oklahoma City. Names of attorneys were randomly selected. Each envelope contained the following:

1. One opinionnaires dealing with the electronic coverage of court trials.
2. A cover letter stating the nature and purpose of the study.
3. A self-addressed, stamped envelope.

A follow-up letter was mailed to those who did not respond after three weeks. The writer also backed this up with numerous phone calls to their offices and homes to speed up response and returns.

ENDNOTES

¹Fred M. Kerlinger, Foundations of Behavioral Research (Chicago, 1973), pp. 153-154.

²Marvin E. Shaw and Jack M. Wright, Scales For the Measurement of Attitudes (New York, 1967), p.1.

³Kerlinger, p. 20.

⁴Ibid, p. 18.

⁵Allen L. Edwards, Techniques of Attitudes Scale Construction (New York, 1957), p. 10.

⁶Shaw and Wright, p. 3.

⁷Edwards, p. 2.

⁸Shaw and Wright, pp. 6-9.

⁹Kerlinger, p. 496.

¹⁰Ibid.

¹¹Ibid.

¹²Edwards, p. 168.

¹³Walter J. Ward, "Notes on Two-Factor Mixed Design with Repeated Measures on One Factor," (Unpublished Paper, Oklahoma State University, November, 1981, Stillwater, Oklahoma).

¹⁴Ibid.

CHAPTER IV

FINDINGS

Study data was obtained from a Type 1 two factor mixed design with repeated measures on one factor of attitude scores in the opinionnaire. The study compared the attitudes of attorneys - defense and prosecutors - and editors on different aspects of news effects on electronic coverage of court trials. These news effects are: Publicity Effects, Information Function, Individual Rights, Media Influence, and Media Rights.

A mail survey yielded a 60.2 percent return; 59 of the 98 opinionnaires were completed and returned. Seventeen broadcast editors, 28 defense attorneys, and 14 prosecuting attorneys responded.

Each respondent registered his agreement on a five-point Likert rating scale by checking spaces representing a) strongly agree, b) agree, c) neutral, d) disagree, and e) strongly disagree.

Each respondent's answers were scored so that the most favorable responses were given the highest score of (5), and the least favorable, the lowest score (1). A score of 3 represented neutral or undecided.

Analysis of Attitude Score

Attitude by Type of Respondent

The overall attitude of respondents (editors, defense attorneys and prosecutors) towards electronic coverage of court trials were very similar and indicate no significant difference.

As reported in Table I, the mean attitude score of editors was 3.01, prosecutors, 2.72 and defense attorneys, 2.78. This indicates no significant difference in the respondents attitudes towards the overall issue of electronic coverage of courtroom trials. The attitudes of the prosecuting and defense attorneys were more alike than those of the editors.

Hypothesis 1 which stated: There is no significant difference between editors and attorneys (prosecutors and defense) in their attitudes towards electronic coverage of courtroom trials, and Hypothesis 2 which stated: There is no significant difference between defense attorneys and prosecuting attorneys in their attitude towards electronic coverage of courtroom trials were confirmed.

Attitudes by Categories of News Effects

The difference between attitude mean score, by categories of news effects, (Publicity effects, Information

function, Individual rights, Media influence, Media rights) as shown in Table II were not significant ($F:1.25, p.>.01.$).

TABLE I
EDITORS, PROSECUTORS, AND DEFENSE ATTORNEYS
MEAN ATTITUDE SCORES TOWARDS ELECTRONIC
COVERAGE OF COURT TRIALS

| Types of Personnel | Mean Scores |
|--------------------|-------------|
| Editors | 3.01 |
| Prosecutors | 2.72 |
| Defense | 2.78 |
| Mean Total | 2.83 |

The mean scores for all five categories range from 2.37 (which is closer to disagree than neutral) for media rights to 3.29 for information function to produce a mean total of 2.83 which is slightly below the undecided (neutral) rating of 3. In short, all of the news effects elicit neutral (undecided) responses from the respondents.

The respondents neutral can be attributed to flexibility of both groups. Their attitudes may change with

their vested interest. For instance, if publicity seems to favor the public prosecutor he might be inclined to view it as positive. The media might view the publicity as positive if coverage attracts large numbers of viewers.

TABLE II
RESPONDENTS MEAN ATTITUDE SCORES TOWARDS
ELECTRONIC COVERAGE OF COURT TRIALS
BY CATEGORIES OF NEWS EFFECTS

| Categories of News Effects | Mean Scores |
|----------------------------|-------------|
| Publicity Effects | 2.94 |
| Information Function | 3.29 |
| Individual Rights | 2.64 |
| Media Influence | 2.93 |
| Media Rights | 2.37 |
| Mean Total | 2.83 |

NOTE: Critical difference between mean scores = 1.18

On the other hand a prosecutor or defense attorney might have a negative attitude if publicity is believed to adversely affect their case and the course of justice.

Attitude by News Effects:

Respondents Interests

Although there were no significant differences for between personnel types and between categories; interaction between personnel types and categories of news effects is significant ($F:2.79$, $p.<.01$).

That meant the attitude toward the different news effects of cameras in courtroom greatly depends on the type of each respondents professional interest. The findings reject Null Hypothesis number 4 that: There is no significant difference between editors and attorneys in their attitude towards the media's rights to inform the public (information rights).

As shown in Table III , editors mean score of 4.50 in the information news effect category has the highest mean score in the entire table, this indicates a very favorable attitude towards the information category news effect.

Broadcast Editors did not express a very strong overall positive attitude. This is borne out by the fact that there exists no significant difference with a higher mean score towards the right of the media (3.01) and other categories in their favor except the Information category which is higher with a mean score of 4.50. Such an attitude may possibly reflect a balanced fair attitude on the part of journalists in general and the respondents to this opinionnaire in particular.

TABLE III

EDITORS, PROSECUTORS AND DEFENSE ATTORNEYS MEAN ATTITUDE
 SCORES TOWARDS ELECTRONIC COVERAGE OF COURT TRIALS
 BY CATEGORIES OF NEWS EFFECTS

| Types of Personnel | CATEGORIES OF NEWS EFFECTS | | | | |
|--------------------------|----------------------------|-------------------------|----------------------|--------------------|-----------------|
| | Publicity Effects | Information Function | Individual Rights | Media Influence | Media Rights |
| Editors | 2.38 | 4.50 | 3.30 | 2.10 | 3.01 |
| Defense Attorneys | 3.44 | 2.28 | 2.22 | 3.44 | 2.72 |
| Prosecuting Attorneys | 3.00 | 3.10 | 2.50 | 3.25 | 2.78 |
| Mean Totals | 2.94 | 3.29 | 2.64 | 2.93 | 2.83 |

NOTE: The Critical Difference between vertical or horizontal means: 1.54, $p < .01$.

In other words, based on the high mean score of 4.50 all the editors that responded to the opinionnaire show a strong favorable attitude toward the informational function on the use of cameras in courtroom trials (electronic coverage of court trials) as a communication means of educating the public on what happens in a courtroom and also as a medium that helps in allaying public fears and dispel rumors during trials and what goes on in a courthouse.

Both defense and prosecuting attorneys responded negatively to the information function of the opinionnaire. The defense attorney has a mean score of 2.28, more toward disagree than neutral (while the prosecuting attorney by a slight difference gave a mean score of 3.10). With such a slight difference, it is safe to note that both attorneys do not support the notion that television coverage of court trials serves an information function in helping to educate the public on what happens in a courtroom; or serves to allay public fears and dispel rumor during trials.

It should however be pointed out that the mean attitude scores of the defense attorneys for both the publicity and media influence categories was the same at 3.44, which were the highest for these items in the survey.

The items scored highly by the defense attorneys concerns the issue of media publicity in sensational cases, the problem of attorneys grandstanding in front of cameras and others.

However, not all attorneys are alike. The prosecutors mean attitude scores toward all the five categories were below negative or very slight above the undecided (neutral) level of three.

CHAPTER V
SUMMARY, IMPLICATIONS, RECOMMENDATIONS,
AND CONCLUSION

The conflict between the right to a free media and the right to a fair trial is confusing and perplexing; it is not a case of good against evil, but two rights guaranteed by the Constitution which at times oppose each other.

G.K. Chesterton, an English poet and author, once wrote of the issue: "It's competition not between right and wrong but between right and right."¹

This study has attempted to gauge the attitudes of broadcast editors (television) and lawyers (prosecutors and defense attorneys) in Oklahoma towards electronic coverage of court proceedings. The analysis of the data showed that editors and lawyers (both prosecutors and defense attorneys) were chiefly concerned with the issues on electronic coverage of court proceedings. However, the groups tend to favor issues supporting their vested interests.

Example: Editors believed that the electronic coverage of court trials ensures the defendant a fair trial and serves as an informational function in educating the public on what goes on in a courtroom and also helps in allaying public fears and dispelling rumors during trials. The

attorneys on the other hand believed otherwise, claiming media coverage (television) overpublicizes court trials and prejudices their clients case.

A Type 1 analysis of variance was used in this study which is primarily concerned with comparing the attitudes of broadcast editors to those of prosecuting and defense attorneys about different aspects of the electronic media's influence on court trials.

The three groups, editors, defense and prosecuting attorneys, in this study were asked to respond to different categories of news effects on electronic coverage of court trials. These news effects are: Publicity Effects, Information Function, Individual Rights, Media Influence, and Media Rights.

The analysis showed the F ratio for between types of personnel at 2 by 56 degrees of freedom is 6.64 and not significant at either the 0.05 or 0.01 level of confidence. The null hypothesis was accepted that there is no significant difference between editors and attorneys (prosecutors and defense) in their overall attitude towards the effect of electronic coverage of court trials. By implication the author inferred that the overall attitudes of both groups, journalists and attorneys, more or less concurred. This can be attributed to flexibility of both groups - their attitudes may change with their vested interests. For instance, if publicity seems to aid the public prosecutor he might be inclined to view it favorably. On the other hand he might

take a negative attitude towards media rights and take the stand that publicity might adversely affect the course of justice, if he perceived his interest to be damaged by such publicity. It is however, interesting and also encouraging to note that journalists have not taken a very strong positive attitude; this is borne out by the fact that there exists no significant difference with a higher mean scores on a number of items, towards the rights of the media. Such an attitude may possibly reflect a balanced and fair attitude and sense of judgment on the part of journalist in general and the respondents to this questionnaire in particular.

Mean attitude scores for between types of groups also indicated no significant difference between defense and prosecutors. It was inferred that such a result is again attributed to the interests of each group, and although they sometimes were favorable to the publicity obtained by the presence of a camera in the courtroom, they were opposed to it when they considered publicity to be counter to their interests. The author inferred that attitude towards electronic coverage among both prosecutors and defense attorneys was merely a function of their interest and depended upon the individual case (with an overall slightly positive attitude).

Attitudes by News Effects -
Respondents Interactions

The F ratio for interaction between categories of news effects and types of personnel is 2.79 at 8 by 224 degrees of freedom, and this value is significant at the 0.01 level of confidence. Although there were no significant differences as indicated by calculated F values for between group types and between categories, interaction between group types and categories of news effects is significant.

The interaction effects between attorneys and editors in their attitude towards information rights can be broken into two sub levels. Those between defense attorneys and editors and those between prosecutors and editors.

Interaction between defense attorneys and editors:
There is significant difference between the mean scores of these two groups as indicated by a gap test. The critical difference was evaluated as being equal to 1.54. The difference between mean scores for these two groups is 2.22.

There is no significant difference between the mean scores of prosecutors and editors in their attitude to information rights. The difference between their mean scores on this category is 1.14 and is below the critical difference of 1.54.

It seems that defense attorneys do not share the same enthusiasm as do journalists towards the information rights which is corollary to the First Amendment. Defense attorneys usually have to cope up with sensational and dramatic

news about their clients. In most instances these news items seem to damage rather than aid the image of their clients. Otherwise they may not be sensational at all. Therefore, defense attorneys are perhaps less emphatic in acknowledging the privileges of the First Amendment. The fact that prosecutors' scores do not show any significant difference with those of editors' scores can be attributed, at least in most instances, to news reports which seem to favor the prosecution, or are unfavorable to defense. When the state prosecutes, the news value tend to support the cause of upholding public justice and therefore is favorable to the prosecutors. It must be recognized that the sample was small and the statistical significance was due to random error phenomenon. The overall tendency indicated that although there was no basic differences in attitude towards informational rights there was some differences in the intensities of perception of these rights.

There was no significant difference between attorneys and editors in their attitude towards individual rights. The writer inferred that all the groups in this study hold individual rights as being as important part of the social system and have a cohesive and conformist attitude towards this aspect of news effect on the individual.

Implications

It was not a matter of whether research has indicated a more compelling right for one group over the other, because

the goal of this study was to indicate ways the groups together towards serving the public.

Both the media and the judiciary must see clearly the roles they are to fulfill if society is to remain rational. Ultimately someone's freedom will be lost if momentous decisions that the media and judiciary must make are left to the law to resolve.

The media in particular must develop its clear sense of social responsibility. The Hutchins Commission in 1947 cited what the alternative would be if the media did not develop a clear sense of professional responsibility. It stressed that:

Everyone concerned with freedom of the press [media] and with the future of democracy should put forth every effort to make the press accountable, for if it does not become so of its own motion, the powers of government will be used as a last resort, to force it to be so.²

The author believes that freedom carries with it obligations and responsibilities, and since the press enjoys a privileged position in society, it is obligated to act in a responsible manner that will benefit the profession and the people that it is supposed to serve.

On issues like pretrial publicity, in which members of the Bar are opposed to some of the methods of the media's coverage of court proceedings, the obligations involved are many. Reporting or broadcasting a defendant's prior record should be weighed and carefully considered; ethnic and racial labels should be eliminated, and whether the public has an instantaneous need to know must be considered

carefully so as not to prejudice the case of the defendant. Only a responsible journalist would weigh all the effects of such dissemination and arrive at a just conclusion which protects his freedom, and the freedom of the accused.

There is the temptation to follow the traditional path, to ask, "Why should my television station, radio station, or paper act in such a way, when everyone else is going about it the same old way?". It is difficult, in particular, where the responsible journalist tends to lose at the box office. But such a problem has always confronted men and women of conscience, and the answer always has been the same. It is what Atticus Finch told his children in To Kill A Mockingbird: "The one thing that doesn't abide by majority rule is a person's conscience."³

Therefore, the leadership of who leads on the right path must be borne by the stronger members of the media who must show their weaker brethren the path they must tread towards maturity. Otherwise, one must face the consequences. The British Jurist Lord Chancellor Hardwicke in 1742 stated:

Nothing is more incumbent upon the courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequences than to prejudice the minds of the public against persons concerned as parties before the case is finally heard.⁴

In all aspects, the media be it television, radio, or print must be more responsible and alert to its obligations and the way and manner in which its functions are executed. The media must be willing and ready to solve its own

problems rather than allow an often hostile judiciary to solve the problems for them.

The unsworn comments of individuals in celebrated trials like Hauptmann, Sheppard, and Estes, do not fall under the broad umbrella of the First Amendment and the "right to know." Although, the public has a right to be kept informed of the details as they are testified to during a trial in order to fulfill its role of scrutinizing the proceedings and ensuring they are consistent with the Sixth Amendment, speculative and out-of-courtroom statements based upon second or third hand knowledge do not qualify as information the public has a right to know.

The media must strive to disseminate accurate, sufficient and balanced information and to allow the public to decide the issues.

The media must report with maturity. In regards to this study reporting should present an examination of courtroom proceedings, bring to light judicial misconduct, and the abuse of police power, the infringement of a defendant's rights, and racial prejudice.

The findings of this study indicated respondents are eager to preserve their Constitutional and individual rights. Journalists believed the public should be informed of trial events while attorneys believed media coverage prejudices and ultimately denies the defendant a fair trial.

Restraints on media coverage are necessary in some cases where immediate dissemination of information may

endanger proper administration of justice. Circumstances may warrant that the broadcasting or publication of information about the accused be delayed in a criminal case. In these cases and circumstances, editors and reporters must make a "judgment" and decide whether to publish or not. An editor must not decide to broadcast or publish because a competing station or newspaper intends to broadcast or publish. Neither must an editor run sensational news stories containing prejudicial elements to "scoop" others.

Journalists must follow a rule of reason in determining what is necessary and useful for public disclosure. Friendly and Goldfarb believe certain inherent information need not be made public:

Prejudicial characterizations, tendentious and peripheral information, juicy tidbits and gratuitous judgments by the legal establishment and its agent do not fall into the category of data that must be immediately made public.⁵

Journalists should not perceive the rights to free press and fair trial as adverse interests. The two rights are mutually interdependent and can co-exist only in an atmosphere of mutual understanding between the media and members of the Bar. Journalists and members of the Bar must understand that the two rights are supportive of each other and never intended to be separate and equal in all circumstances.

Recommendations

The media cannot continue to hide behind the skirts of

the First Amendment and the Bar cannot continue to plead Sixth Amendment rights to justify their transgressions and professional malpractices. The following recommendations are offered in hope of helping the media create a better understanding and promote greater cooperation between the media and the Bar.

Upgraded Standards and Better Curriculum
for Journalism and Broadcasting Schools

The overall structure and curriculum of journalism education should be re-examined and upgraded to better serve the people. Rather than concentrating on Journalism courses alone, students should be given a thorough training in liberal arts, the basic sciences, and communication studies as a whole. Through such liberal training the students will come into reality that his or her society is not the only one but there exists various societies with different cultures and norms. Students should study the ethical, sociological and psychological dimensions of news reporting more as well as the techniques of reporting. Journalism schools should require students to study proceedings and practices leading to and associated directly with criminal and civil trials.

Trained Specialists for
Court Reporting

The media needs to develop specialists in the area of

crime and court reporting. A reporter out of journalism school should not be assigned to the courthouse beat until he can prove a comprehensive understanding of police and court procedures and practices. This demands changes in journalism school programs and attitudes of those who head media organizations.

Joint Bar - Media Councils

Bar-press councils are a must and should be developed in every locality rather than on a state or national level. These councils should be used to foster greater cooperation in the monitoring of crime and court coverage in their areas. The councils should conduct seminars and symposiums exploring electronic coverage of court proceedings in particular, and the Free Press - Fair Trial controversy in general. Such events would allow the free exchange of ideas and opinions, and create an atmosphere conducive to a better understanding of the controversy.

Commitment by the Media Geared

Towards Public Education

Rather than running after the bizzare details and sensational aspects of a case, the media must assume an effective role in educating the public on how the judicial system works.

Willingness to Hold Certain
Information

The media must restrain themselves in the reporting of some cases by withholding the details of a defendant's prior record, and aspects of past bizzare behavior not directly linked to public safety, until the trial is over or until a jury is seated.

Need for Future Studies

This study encompassed a very small universe and the need for further and continuous research studies in this area is mandatory. The author strongly suggests that similar studies be conducted in other states and areas with a larger number of television editors, reporters and lawyers who actually have participated in court televised trials as respondents.

Such studies will help facilitate comparison of attitudes of broadcast journalists and attorneys around the nation and help build an overall picture of attitudes toward the electronic coverage of court proceedings.

Future studies need not be limited to television alone but should encompass all areas of the broadcast and print media affected by Canon 3A (7) of the American Bar Association's code of judicial ethics.

Conclusion

Canon 35, like many regulations enacted in a time of

apparent crisis, appears to have been exaggerated. The legal profession's resistance to cameras in courtrooms seems to have been born partly of a legitimate concern for judicial decorum and the rights of defendants. It also may have sprung from a desire to insulate the profession's status in society.

Some occupational sociologists pointed out that established professions resist full public scrutiny of their work; that it tends to demystify their realm of expertise, reduce public respect for the profession and diminish their occupational status.⁶ Electronic coverage of court proceedings threatened to open the judicial process to the eyes and ears of the public and their scrutiny - which it appears the Bar does not like. The passage of Canon 35, now Canon 3A (7), has helped to keep the public largely ignorant of the judicial process.

Times have changed since the Hauptmann, Sheppard, Estes, and Irvin trials. Technological advances have improved the art of news gathering by the broadcast industry. Some elements of the media ignored the rights of Lee Harvey Oswald when he was accused of the death of President John F. Kennedy on November 22, 1963. However, reporting of the attempted assassination of President Ronald Reagan in March 1981, and the subsequent pretrial proceedings and trial of the accused assassin, John Hinckley, Jr., has been commendable.

Hurdles will to arise as efforts to open courtrooms to electronic coverage. However, they can be overcome by promoting greater understanding between the media and the Bar, and by stressing the interdependence of the First and Sixth Amendments. Wright, former Chief Justice of the California State Supreme Court wrote:

Our entire democratic process depends upon our preserving both a strong and free press and an independent Judiciary. Without the courts there would be no free press, and without a responsible, free press we would be unable to maintain a strong and effective judicial system.⁷

ENDNOTES

¹Friendly and Goldfarb, p. 237.

²Robert Hutchins et al., Commission On the Freedom of the Press, A Free and Responsible Press (Chicago, 1947), p. 80.

³Harper Lee, To Kill A Mockingbird (Garden City, 1960), p. 114.

⁴"Free Press--Fair Trial: Rights in Collision," New York University Law Review, Vol. 34 (New York, 1959), p. 78.

⁵Friendly and Goldfarb, p. 237.

⁶Kielbowicz, p. 20.

⁷Donald R. Wright, "Fair Trial and Free Press: Practical Ways to Have Both," Selected Readings, Fair Trial - Free Press, ed. Glenn R. Winters (Chicago, 1971), p. 114.

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APPENDIXES

APPENDIX A

COPIES OF CORRESPONDENCE

Feyi Ogunduyile
School of Journalism and Broadcasting
Oklahoma State University
Stillwater, Oklahoma 74078

Dear Sir:

I am conducting a survey of broadcast editors and attorneys in Oklahoma (both prosecutors and defense attorneys) on their attitudes toward the electronic coverage of court proceedings. I urgently need the valuable help you can provide by filling out this opinionnaire.

The items in the attached opinionnaire deal with an issue of public importance. The survey results should provide significant and useful information that can help to educate the public about this issue.

The opinionnaire will take no more than 5-10 minutes to complete.

I cannot overemphasize the importance of receiving the completed opinionnaire from you as soon as possible. I have enclosed a stamped, addressed envelope for your convenience.

In expressing your opinions check the first response that comes to your mind rather than pondering over the item. If you have any questions regarding the survey, please do not hesitate to telephone me at (405) 372-6725.

Thank you very much for your cooperation in responding to this opinionnaire.

Sincerely,

Feyi Ogunduyile
Candidate for the Master of Science
Degree in Mass Communication

Feyi Ogunduyile
School of Journalism and Broadcasting
Oklahoma State University
Stillwater, Oklahoma 74078

Dear Sir:

By now you must have received my previous letter requesting your participation in a study dealing with the electronic coverage of courtroom trials.

To date I have not received the completed opinionnaire from you. Would you please return the copy as early as possible. A self addressed stamped envelope with another copy of the opinionnaire is enclosed to facilitate quick return.

The success of this study depends upon your cooperation.

Sincerely,

Feyi Ogunduyile
Candidate for the Master of Science
Degree in Mass Communications

APPENDIX B
OPINIONNAIRE

NOTE: The purpose of this opinionnaire is to obtain your opinions regarding the issue of electronic coverage of court proceedings (cameras in courtrooms). Please check the first response that comes to mind rather than pondering over the item. There are no right or wrong answers.

Please indicate your degree of agreement or disagreement with a check () mark in the appropriate space. Check the midpoint if you do not have an opinion on a given item. THANK YOU.

1. The presumption that television coverage of courtroom proceedings is biased and prejudicial is based on conjecture rather than fact.
Strongly agree ___ ___ ___ ___ ___ Strongly disagree
2. Previous causes of sensational publicity justify banning electronic media (television) coverage of courtroom proceedings.
Strongly agree ___ ___ ___ ___ ___ Strongly disagree
3. Television coverage of court trials serves to allay public fears and dispel rumors during trials.
Strongly agree ___ ___ ___ ___ ___ Strongly disagree
4. Television coverage of court proceedings helps educate the public on what happens in a courtroom.
Strongly agree ___ ___ ___ ___ ___ Strongly disagree
5. Television coverage of a trial singles out the defendant and adversely prejudices his case.
Strongly agree ___ ___ ___ ___ ___ Strongly disagree
6. Television coverage reinforces the principle that a defendant is innocent until proven guilty.
Strongly agree ___ ___ ___ ___ ___ Strongly disagree
7. Witnesses are reluctant to testify because of fears of publicity created by television coverage.
Strongly agree ___ ___ ___ ___ ___ Strongly disagree
8. Television coverage of trials serves the cause of justice motivates witnesses to come forward to testify.
Strongly agree ___ ___ ___ ___ ___ Strongly disagree

9. Television coverage of a trial denies the defendant a fair trial.
- Strongly agree _____ Strongly disagree
10. Fair trials are possible without placing restraints upon television coverage.
- Strongly agree _____ Strongly disagree
11. Television coverage of courtroom proceedings has no significant influence on jurors as often claimed.
- Strongly agree _____ Strongly disagree
12. The presence of television cameras in the courtroom influences jurors by emphasizing the notoriety of the trial.
- Strongly agree _____ Strongly disagree
13. Both defense and prosecuting attorneys, during televised trials, tend to show off for television cameras rather than concentrate on the case.
- Strongly agree _____ Strongly disagree
14. Television coverage of trials should be banned.
- Strongly agree _____ Strongly disagree
15. Barring television cameras from the courtroom violates the television's First Amendment rights.
16. Television should be granted unlimited access to all judicial proceedings.
17. Television coverage of a trial provides a more balanced and complete account of a court trial than other media.
- Strongly agree _____ Strongly disagree
18. Television coverage of trial over dramatizes and gives the public a wrong impression of what actually takes place in a trial.
- Strongly agree _____ Strongly disagree

PLEASE CHECK APPROPRIATE ITEM:

Present Position: 1) Editor _____
2) Prosecuting Attorney _____
3) Defense Attorney _____
Years served in Present Position:
1) Three years or less _____
2) More than Three years _____

APPENDIX C

TABLE SHOWING STATES PERMITTING
TELEVISION IN THEIR COURTROOMS

TABLE IV
STATES PERMITTING TELEVISION
IN THEIR COURTROOMS

| State | Court Where Cameras Allowed or Proposed | Type of Plan | Consent of Defendant Required | Date |
|---------------------------|---|-----------------|-------------------------------------|----------|
| Alabama | Trial, Appellate | Permanent | Yes | 2-01-76 |
| Alaska | Trial, Appellate | Permanent | Yes ¹ | 11-01-79 |
| Arizona | Trial, Appellate | Experimental | No | 5-31-79 |
| Arkansas | Trial, Appellate | Experimental | Yes | 1-01-81 |
| California | Trial, Appellate | Experimental | No | 7-01-80 |
| Colorado ⁶ | Trial, Appellate | Permanent | Yes | 2-27-56 |
| Connecticut | Trial, Appellate | Experimental | No | 4-12-82 |
| Delaware | Appellate | Experimental | No | 5-01-82 |
| D.C. | None | | | |
| Florida | Trial, Appellate | Permanent | No | 5-01-79 |
| Georgia | Trial, Appellate | Permanent | Yes | 5-12-77 |
| Hawaii | Trial, Appellate | Pending | Yes | Pending |
| Idaho | Supreme Court | Permanent | No | 8-27-79 |
| Illinois | Trial, Appellate | Pending | N.S. | Pending |
| Indiana | None | | | |
| Iowa | Trial, Appellate | Permanent | No | 1-01-82 |
| Kansas | Supreme Court | Experimental | No | 9-14-81 |
| Kentucky | Trial, Appellate | Permanent | No | 7-01-81 |
| Louisiana ⁷ | Trial, Appellate | Permanent | Yes | 7-13-79 |
| Maine | Supreme Court | Experimental | No | 4-02-82 |
| Maryland | Trial, Appellate | Experimental | Yes ⁵ | 1-01-81 |
| Massachusetts | Trial, Appellate | Experimental | No | 1-01-80 |
| Michigan | None | | | |
| Minnesota ⁶ | Appellate | Experimental | No | 1-27-78 |
| Mississippi | None | | | |
| Missouri | None | | | |
| Montana | Trial, Appellate | Permanent | No | 4-18-80 |
| Nebraska | None | | | |
| Nevada | Trial, Appellate | Experimental | No | 4-07-80 |
| New Hampshire | Trial, Appellate | Permanent | No | 1-01-78 |
| New Jersey | Trial, Appellate | Permanent | No | 10-08-80 |
| New Mexico | Trial, Appellate | Experimental | Yes | 7-01-80 |
| New York ⁶ | Appellate | Permanent | No | 1-01-81 |
| North Carolina | Trial, Appellate | Pending | No | Pending |
| North Dakota | Appellate | Permanent | No | 7-01-80 |
| Ohio | Trial, Appellate | Permanent | No | 1-01-82 |
| Oklahoma | Trial, Appellate | Permanent | Yes ² | 2-22-82 |
| Oregon | None | | | |
| Pennsylvania ⁶ | Non-Jury Civil Trial | Experimental | Yes ¹ | 10-01-79 |

TABLE IV (Continued)

| State | Court Where Cameras Allowed or Proposed | Type of Plan | Consent of Defendant Required | Date |
|----------------------|---|-----------------|-------------------------------------|---------|
| Rhode Island | Trial, Appellate | Experimental | No | 9-01-81 |
| South Carolina | None | | | |
| South Dakota | Trial, Supreme Court | Pending | Yes | Pending |
| Tennessee | Trial, Appellate | Permanent | Yes | 2-22-79 |
| Texas | None ³ | | | |
| Utah | None ⁴ | | | |
| Vermont ⁶ | None | | | |
| Virginia | None | | | |
| Washington | Trail, Appellate | Permanent | Yes ¹ | 9-20-76 |
| West Virginia | Trial, Appellate | Permanent | No | 5-07-81 |
| Wisconsin | Trial, Appellate | Permanent | No | 7-01-79 |
| Wyoming ⁶ | Supreme Court | Experimental | No | 8-14-81 |

¹Coverage of objecting parties is not permitted. Other coverage is allowed.

²In civil trials, coverage of parties other than objecting defendant is allowed.

³Audio taping of appellate proceedings is allowed.

⁴Still photography is allowed.

⁵Unless defendant is a government official or entity.

⁶Liberalization of existing coverage being considered.

⁷Statute allows coverage if all parties consent, but the state Supreme Court has ruled that reproductions may only be shown in schools.

N.S.: Not Specified

Source: "Cameras in the Courts," Broadcasting (July, 1982), p. 48.

VITA)

Feyi Ogunduyile

Candidate for the Degree of

Master of Science

Thesis: A SURVEY OF ATTITUDES OF LAWYERS AND BROADCAST NEWS EDITORS IN OKLAHOMA TOWARDS ELECTRONIC COVERAGE OF COURT PROCEEDINGS

Major Field: Mass Communications

Biographical:

Education: Graduated from Adeola Odutola High School, and Baptist Academy Lagos for Higher School Certificate in June, 1973; received the Bachelor of Arts in Arts and Science degree in Radio Television Film - News and Current Affairs, at Oklahoma State University in 1981; completed requirements for the Master of Science degree at Oklahoma State University in May 1983.

Professional Experience: Director "News and World Report," Director "People in the News," and "Today in the Papers," Assistant Producer, Producer, News Production Programme, Nigerian Television, Ibadan, Nigeria. Attended professional training school at Nigerian Institute of Journalism (NIJ) majoring in Broadcasting and Journalism. Production Assistant, KOSU-FM, 1980; Production Assistant, "Stillwater Magazine" 1981. Production Assistant and Video Editor on the filming of "CARS", and "The Center for Global Studies," for Oklahoma State University, 1981-1982.