TV Comes to the Courts

By Duane Silverstein

Questions concerning the use of cameras in the courtroom have been debated for more than forty years. For almost twenty of these years, Colorado was the only state to allow cameras to pass through the courthouse doors; however, the question is once again the focus of national attention. This article discusses the issues of televised trials and surveys the current situation.

In the past three years, seven states and one county have allowed televising of courtroom proceedings.[1] Four states are currently considering following suit. This article presents a history of the American Bar Association canon opposing televised trials, the major arguments in favor of and against such use of the camera, a synopsis of what has happened in the states that have allowed cameras in the courtroom, and a survey of the current national situation and likely future developments in the area.

HISTORY

In 1937, after a year-long study prompted by the sensational kidnaping trial of Bruno Hauptmann, the American Bar Association adopted Canon 35 absolutely restricting photography and radio broadcasting in the courtroom.[2]

Despite the unyielding language of Canon 35, the adoption and promotion of which has been termed the most controversial act in the history of the ABA,[3] the canon was approved by the ABA House of Delegates without debate. Ignoring the recommendations of its own special committee on the subject, which proposed that decisions on photographic coverage be made by the trial judge with consent of counsel, the House of Delegates approved a motion to accept without discussion all thirteen recommended amendments to the Canons of Ethics that they were then considering. The creation of Canon 35 was one of those recommendations.

Although controversial and of precarious origin, Canon 35 remained almost unchanged until 1952, when it was amended to include a ban on televising courtroom proceedings, and a new justification—distraction of witnesses—was added to the language.

Since then, Canon 35 has been under almost constant attack by [illegible] news

media. In 1963, after extended hearings, the ABA adopted its special committee's resolution that the "substantive provision of Judicial Canon 35 remain valid and with minor deletions should be retained as essential safeguards of the individual's inviolate and personal right of fair trial."[4] Additionally, the canon was supplemented with a concurrent resolution recommending its incorporation in the rules of court of every state.

The current ABA version is found in Canon 3A(7) of the Code of Judicial Conduct, which was adopted in 1972 by unanimous vote of the House of Delegates. It reads:

(7). A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a 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 investitive, 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 or reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

Although the canon reflects a concern for the educational use of videotaped proceedings, it restricts the courts' discretion and is consistent with Canon 35. In 1975, the ABA voted down a proposal to reconsider Canon 3(A)7; however, at the February 1977 meeting in Seattle, the ABA Legal Advisory Committee on Fair Trial and Free Press of the Standing Committee on Association Communications stated that it would have to confront the issue in the future.

To put the constant debate over Canon 3(A)7 into proper perspective, it is important to note that the Canons of Judicial Ethics are standards of policy recommended by the ABA and "have the force of law only where voluntarily adopted and incorporated in state laws or as a rule of court."[5]

Arguments Opposing Televised Trials

Those who are opposed to allowing television coverage of trials base their stand on five primary arguments. A brief discussion of those arguments follows.

Opponents of cameras contend that filming is disruptive and has an adverse psychological effect; proponents contend the reverse.

1. Televising a Trial Will Disrupt Courtroom Proceedings. Perhaps the most frequently stated argument against allowing cameras in the courtroom is that "the very presence in the courtroom of various photographic and sound devices, with operators working under the intensely competitive pressures of their craft, tend to cause distraction and are disruptive of the judicial atmosphere in which trials should be conducted."[6]

The media contend that technological advances and pooling arrangements have greatly ameliorated if not entirely eliminated the physical distractions associated with televising a trial.

A closely related argument is that broadcasting has a disruptive psychological effect on trial participants. Introverted witnesses, knowing their testimony is being televised, might be self-conscious or less decisive in their answers. Extroverted witnesses might be tempted to grandstand and play to the camera. The supposed psychological effect, cited by the United States Supreme Court in *Estes v. Texas*,[7] remains the major obstacle barring cameras from the courtroom.

Proponents of televised trials contend that this psychological effect is conjecture and that it has never been subject to serious study. Furthermore, judges in jurisdictions that have allowed cameras in the courtroom have indicated that the supposed psychological effects do not in fact take place.[8]

2. Televised Trials Violate the Participants' Right to Privacy. The right of privacy is another often cited reason for barring cameras from the courtroom. An individual's right of privacy is limited, however. When someone becomes identified with an occurrence of public interest, he emerges from seclusion, and it is not an invasion of his right to privacy to publish his photograph or otherwise to give publicity to his connection with that event.[9]

3. Televising Trials Will Make It More Difficult to Obtain Witnesses. Several opponents of allowing cameras in the courtroom have pointed out that witnesses would be reluctant to testify if they knew they were going to be

televised. While a witness may be subpoenaed, he will probably not "be very friendly to the one who forces him to undergo the publicity he dreads."[10]

4. Televising Trials Adds to the Problem of Prejudicial Publicity in Sensational Cases. The Supreme Court suggested in *Estes v. Texas*[11] that the sensationalism of a case would be increased by television coverage, thus exacerbating the problem of prejudicial publicity. The leading case in this area is *Sheppard v. Maxwell.*[12] in which pretrial publicity effectively denied the right of a fair trial to defendant Sam Sheppard.

As controversial as the issue of pretrial publicity has been, television coverage is simply one element among many in cases of excessive media coverage. Problems created by television are not sufficiently different from other types of media to justify its blanket exclusion.[13]

5. Trials Will Be Televised Primarily for Commercial Entertainment. In his concurring opinion in the *Estes* case, Chief Justice Warren stated that "the televising of trials would cause the public to equate the trial process with the forms of entertainment regularly seen on television and with the commercial objectives of the television industry."[14] Proponents of this argument raise the spectre of trials interrupted by commercial breaks, and in fact commercials for soft drinks, soups, eyedrops, and seat covers were inserted in the Estes trial.

Proponents of televised trials argue that actual trials on television are preferable to "a hoked-up Perry Mason thing."[15] Furthermore, it is argued that televising a proceeding does not detract from its inherent dignity. The broadcasting of the coronation of Elizabeth II, church services, presidential inaugurations, and United Nations proceedings are often cited as examples.

Arguments Favoring Televised Trials

Four basic arguments are often cited by media representatives and other proponents of televised trials. A brief discussion of these arguments follows.

1. Prohibitions of Television from Courtrooms Are Unconstitutional Restraints on Freedom of the Press. Blanket orders prohibiting the televising of courtroom proceedings have been attacked as unnecessarily vague prior restraints on freedom of the press. It is a well-established point of law that "a clear and present danger" must exist in order to justify a prior restraint on First Amendment freedoms.[16]

Proponents of televised trials argue that reality is preferable to Perry Mason; opponents object on the grounds of commercialism.

Proponents of televised trials have often argued that camera coverage of courtroom proceedings does not present the "imminent, not merely . . . likely, threat to the administration of justice" needed to justify a prior restraint.[17] Nonetheless, prohibitions of in-court telecasting have not yet been deemed unconstitutional prior restraints on freedom of the press.[18] In *Estes v. Texas,*[19] the Court took the view that prohibitions of in-court telecasting, without actual showing of prejudice, would be permissible.[20]

2. Freedom of the Press Is Meaningless if the Tools of the Trade Cannot Be Used in the Courtroom. Proponents of this self-explanatory argument contend that freedom of the press should be applied equally to newspaper reporters who are admitted to courtrooms and to the broadcasters against whom Canon 3(A)7 is aimed. "There

aren't two sets of rights—one protecting the newspaper reporter and another the news broadcasters; we are protected by the same Freedom of the Press; what applies to one must apply to the other."[21] The usual rebuttal to this argument is that there is no discrimination. Both newspaper and television reporters may come to court, take notes, and deliver observations to the world. Newspapers may not send their cameras into the courtroom any more than the other media.

3. Prohibitions Against Televised Trials Violate the Right to a Public Trial. It has claimed that the Sixth Amendment right to a public trial[22] prohibits the exclusion of cameras from the courtroom. There are, however, certain limits to this right. Maintaining courtroom decorum,[23] protecting the safety of witnesses,[24] and protecting the morals of youthful spectators[25] are valid grounds for limiting public attendance. Furthermore, the Supreme Court in *Estes* took the position that "the right of public trial is not one belonging to the public, but one belonging to the accused."[26]

4. Televised Trials Educate the Public About the Judicial Process (and Prevent Star Chamber Proceedings). Proponents of televised trials argue that camera coverage of courtroom proceedings will prevent abuses of the judicial process and at the same time educate the public as to what the courts are doing and how. The most frequently quoted statement in this regard is that of Justice Otto Moore of the Colorado Supreme Court:

> It is highly inconsistent to complain of the ignorance and apathy of voters and then to "close the windows of information through which they might observe and learn." Generally only idle people, pursuing "idle curiosity" have time to visit courtrooms in person. What harm could result from portraying by photo, film, radio and screen to the business, professional and rural leadership of a community, as well as to the average citizen regularly employed, the true picture of the administration of justice?[27]

THE PRESENT SITUATION

The most unyielding opposition to televising trials has come from the federal judiciary. Four years ago the Judicial Conference of the United States reiterated the policy laid down in 1962—no broadcasting, televising, recording, or photographing of trials under any circumstance, even educational or ceremonial. Rule 53 of the Federal Rules of Criminal Procedure states that "the taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted in the court."

Currently, eight states and one Kentucky county allow television coverage of at least some courtroom proceedings. Interestingly, seven of these states have opened up their courtrooms in the last two years. This section discusses the various rules governing television coverage in these states, how the changes came about, and how members of the judiciary feel about the changes.[28]

Colorado

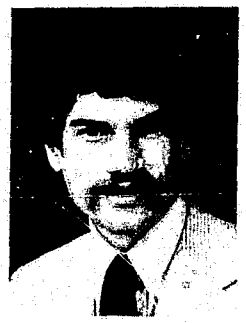
Camera coverage of courtroom proceedings, which is currently allowed at both the trial and appellate levels, began more than twenty years ago when Colorado Supreme Court Justice O. Otto Moore conducted a hearing on whether to allow cameras in the courtroom. During the hearing, hundreds of pictures were taken and a newsreel camera operated for a half-hour without Moore's knowledge. Although he entered the hearing firmly opposed to allowing cameras in the courtroom, Moore wrote what has been referred to as a classic opinion destroying all opposing arguments,[29] concluding that "the dignity or decorum of the court was not in the least disturbed."[30]

As a result of the hearing, Colorado modified its canons of judicial conduct. Canon 3A now reads:

(8) There shall not be any photographing, or broadcasting by radio or television, of court proceedings unless permitted by order of the trial judge and then only under such circumstances as he may prescribe.

(9) A judge should prohibit the broadcasting by radio of court proceedings, or the taking of photographs in the courtroom, where he believes from the particular circumstances of a given case, or any portion thereof, that the broadcasting or

Duane Silverstein was formerly a staff associate in the National Center's Research and Information Service.



Silverstein

taking of photographs would:

(a) detract from the dignity of court proceedings;

(b) distract the witness in giving his testimony;

(c) degrade the court; or

(d) otherwise materially interfere with the achievement of a fair trial.

(10) A judge shall prohibit:

(a) the photographing, or broadcasting by radio or television of testimony of any witness or juror in attendance under subpoena or order of court who has expressly objected to the photographing or broadcasting; and

(b) the photographing, or broadcasting by radio or television of any portion of any criminal trial, beginning with the selection of the jury and continuing until the issues have been submitted to the jury for determination, unless all accused persons who are then on trial shall have affirmatively given their consent to the photographing or broadcasting.[31]

To supplement the canon, the Colorado Broadcasters Association promulgated the Colorado Court Coverage Code for Radio and Television. The code contains provisions governing the decorum of media representatives in the courtroom, and a large portion of the code is devoted to regulations governing pooling of radio and television coverage. The code calls for the appointment of a pooling coordinator who acts as a liaison with the judge and ensures impartial distribution of recorded material.

The reaction to the twenty-one years of television and radio coverage in Colorado has been overwhelmingly favorable. Justice Frank Hall, Associate Justice of the Colorado Supreme Court, in a talk before the Conference of Chief Justices in St. Louis, Missouri, on August 2, 1961, pointed out that "TV broadcasts of trials have not detracted from the dignity of the proceedings, that they have not degraded the proceedings or distracted the participants, that they have not distorted the true nature of the proceedings and that they have shown the serious business of a trial and the judge, jury, lawyers and witnesses all doing their public duty."[32]

An individual identified with an occurrence of public interest emerges from seclusion—his privacy is not invaded by televised proceedings.

Several informal polls and an unscientific survey of Denver district judges and members of the bar have revealed substantial agreement with Justice Hall's position and little opposition to the modified canon.[33] In 1963, the Colorado Bar Association Board of Governors approved a motion to advocate the adoption of a more liberal Canon 35 by the ABA by a vote of fifty to four. Richard Schmidt, Jr., Chairman of the Colorado Bar Association Public Relations Committee, surveyed every district judge in the metropolitan Denver area and found all but one (who had never presided over a televised trial) approved of the modified Canon 35.

Colorado Chief Justice Edward Pringle, who presided over the first important case to be televised after the canon was changed, is very pleased with Colorado's twenty-year experience with cameras in the courtroom: "A lot of people criticize it who never tried it. I've never found it to cause any problem

with the operation of the system. I've never seen witnesses show off. I've never seen jurors become upset. If the judge is going to showboat, he is going to showboat anyway. Maybe the people ought to see it. But I've never seen it happen."[34] Perhaps most important is Chief Justice Pringle's observation that "we've never had a case reversed because of television or photography in the courtroom."[35]

Texas

Texas was one of the first states to allow camera coverage of courtroom proceedings. As early as 1955, an experimental telecast of a trial had taken place in Waco, and over the years there have been several televised trials. The decision on whether to televise a trial was left up to the individual judge's sound discretion.[36]

After the United States Supreme Court reversed a Texas conviction because of the televising of the proceedings in *Estes* v. *Texas*,[37] Texas adopted the American Bar Association version of the canons prohibiting such activity. Interestingly, the Supreme Court of Texas did not adopt the restrictive canon until 1974—nine years after the *Estes* decision.

Canon 3(A)7 received additional support when the Court of Criminal Appeals of Texas, while remanding a televised criminal case to district court, stated that in the event of a retrial the court must not allow television coverage, as it may deprive the appellant of his right to due process.[38] Nonetheless, some district court rules still permit the televising of trials at the judge's discretion.

In November 1976, the following section was added to the Texas Code of Judicial Conduct 3(A)7:

> (d) Oral arguments by the parties in the appellate courts may be recorded by electronic means upon the prior consent obtained from the court, or the chief justice or presiding judge as the case may be, where the means of recording will not distract the participants or impair the dignity of the proceedings.

Alabama

On December 15, 1975, the Alabama Supreme Court adopted Canon 3(A)(7) of the Canons of Judicial Ethics permitting a trial judge in the exercise of his sound discretion to allow photographing, broadcasting, or televising of a trial, provided that the Supreme Court had previously authorized a plan for the courtroom. Supreme Court approval is not needed for every trial once a general courtroom plan has been approved. The plan must provide "safeguards to ensure that such photographing, recording or broadcasting by radio or television of such proceedings will not detract from the dignity of the court proceedings, distract any witness from giving testimony, degrade the court, or otherwise interfere with the achievement of a fair trial."[39] The plan must specify the location and type of equipment to be employed. Affirmative written consent of the accused and the prosecutor is required in criminal cases and of the litigants and their attorneys in civil cases.[40] Additionally, the witnesses, jurors, parties, or attorneys may at any time suspend or stop any photographing or broadcasting by objecting to same.[41] Canon 3A(7B) contains similar provisions for televising, photographing, or recording in appellate hearings.[42]

According to Robert Martin, Public Information Director for the Alabama State Courts, the new canon has "worked out very satisfactorily in the state Supreme Court," and he has "seen no failures to this point." These

continued on page 49

Journal 9 (1969): 87-100.
Hazard, Geoffrey C., Jr., Martin B. McNamara, and Irwin F. Sentilles III. "Court Finance and Unitary Budgeting." *Yale Law Journal* 81 (1972): 1286.
Hufstedler, Shirley M. "New Blocks for Old Pyramids: Reshaping the Judicial System." *Southern California Law Review* 44 (1970-71): 901-915.
"Indigent Access to Civil Courts: The Tiger is at the Gates." *Vanderbilt Law Review* 26 (1973): 25.
"Indigents and Filing Fees: Constitutional Compulsion and Other Remedies." *Arizona State Law Journal* 1974: 241-255.
Lavien, H. "Public Relations Problem with Regard to Fees and Suggested Remedy." *Commercial Law Journal* 81 (December 1976): 504-9.
"Limited Access to the Courts: An Appraisal of Fee Systems." *University of Chicago Law Review* 41 (1974), 841.
Lynn, Arthur D., Jr. "Financing Modernized and Unmodernized Local Government in the Age of Aquarius." *Utah Law Review* 1971: 30.
Mathias, C. McC., Jr. "Fee Schedules and Prepaid Legal Services." *University of Baltimore Law Review* 4 (Fall 1974): 80-5.
Morgan, T. D. "Where Do We Go from Here with Fee Schedules?" *American Bar Association Journal* 59 (December 1973): 1403-6.
Perensovich, Nicholas A. "Limited Access to the Courts: An Appraisal of Fee Systems." *The University of Chicago Law Review* 41 (1974): 841-854.
"Proceeding in Forma Pauperis in Federal Court: Can Corporations be Poor 'Persons'?" *California Law Review* 62 (January 1974): 219-57.
"Progressive User Tax as an Alternative Method of Financing Civil Jury Costs." *Indiana Law Journal* 49 (Spring 1974): 503-15.
Reynolds, R. H. "The Fee System Courts—Denial of Due Process." *Oklahoma Law Review* 17 (1964): 373.
"The Progressive User Tax as an Alternative Method of Financing Civil Jury Costs." 49 *Indiana Law Journal* 503 (1974).
"U.S. v. Kras (93 Supreme Court 631)—a Barrier Intact." *Journal of Family Law* 13 (1973-74): 366-78.
"U.S. v. Kras (93 Supreme Court 631): Justice at a Price." *Brooklyn Law Review* 40 (Summer 1973): 147-91.
"Waiver of Court Costs and Appointment of Counsel for Persons in Civil Cases." *Valparaiso Law Review* 21 (1967):
Willging, T. E. "Financial Barriers and the Access of Indigents to the Courts." *Georgetown Law Journal* 57 (1968): 253.

TV Comes to the Courts *cont'd.*

sentiments are echoed on the trial level by Judge Robert Hodnette, Jr., of Mobile, who allowed coverage of a first degree murder trial. "They [the cameras] kept me . . . and all the personnel on [our] toes." He added that the coverage "increased the dignity of the proceedings."[43]

Nevada

Despite a permissive canon,[44] trials have rarely been televised in Nevada. Judge Keith Hayes allowed television coverage of the Howard Hughes probate hearings in 1977, one of the few cases to be so covered. More noteworthy is the murder trial of Xavier P. Solarzano. In June 1976, KLAS TV in Las Vegas became the first commercial station to broadcast in color an actual murder trial during prime time.[45] The broadcast, which lasted five hours and was aired on three consecutive evenings, resulted from sixty hours of videotaped courtroom activities. Reaction to the broadcast was favorable. Judge Carl J. Christensen, who presided over that trial, stated in a letter to the station manager, "I am very proud of our association in this television production which very accurately portrayed to the general public a little understood procedure."

Washington

Effective September 20, 1976, the Supreme Court of Washington amended Canon 3A(7) of the Code of Judicial Conduct to allow photographing, broadcasting, and television news coverage of court proceedings for the first time in the state's history. Coverage is allowed in both the trial and appellate courts. Washington's new rule resulted from the efforts of that state's Bench-Bar-Press Committee. At the request of the committee, the Washington Supreme Court authorized the experimental videotaping of a negligent

homicide trial in December 1974. According to Superior Court Judge Stanley C. Soderland, who presided over the trial, "All judges and lawyers who viewed the cases were surprised at the minimal or nonexistent distraction caused by the camera and news media. Everyone, without exception, came into church to scoff and stayed to pray."

As a result of the highly favorable reaction to the experiment, the Washington Supreme Court amended the code of judicial conduct 3A(7) to permit broadcasting under certain circumstances, and published illustrative guidelines that, while not officially adopted by the court, discuss pooling arrangements, broadcast equipment, and the decorum of broadcast representatives.

According to Judge Soderland, "News coverage of trials in Washington has been a success [and] no major problems have developed."

Statistics have not been kept on the number and type of trials that have been covered by the broadcast media. According to Judge Soderland, however, the news media have used the privilege sparingly, as there are not many trials worth the cost and effort. James Murphy, President of the Washington State Association of Broadcasters, estimates that no one television station has made more than fifteen appearances with cameras in the courtroom in the one year since adoption of the new rule.

Georgia

In February 1977, Chief Justice H. E. Nichols announced the Georgia Supreme Court's intention to allow cameras in the courtroom, stating that it will help "move the legal system of Georgia into the Twentieth Century."

In late March, Nichols invited twenty-nine representatives of the Georgia news media to propose rules for televising and broadcasting supreme court proceedings. The committee's proposed rules emphasized the importance of maintaining courtroom decorum: "Although the court is making an extraordinary effort to open up its proceedings to broader media coverage, it is essential that the dignity and purpose of the Court be maintained. Therefore those agencies admitted for news coverage should be legitimate and are expected to familiarize themselves with the rules of the Court."

The committee also recommended that the court appoint one officer to manage press credentials and other arrangements, including publishing a court calendar of cases that have been cleared for media coverage well in advance.

As a result of the advisory committee's report on May 12, 1977, the Supreme Court adopted an amendment to Canon 3(A) of the Code of Judicial Conduct and adopted rules requiring that written consent from attorneys and parties, if present, shall be obtained on a form available from the clerk's office. They also allow no more than four still photographers and three television cameras in the courtroom at any one time. The Supreme Court's plan for camera coverage of its proceedings encompasses nineteen rules in all, most concerning the location and movement of media personnel.

On September 12, 1977, Georgia's Supreme Court made its broadcasting debut. As of this writing, five or six oral arguments have been televised. According to Charles Webb, an aid to Chief Justice Nichols, there have been "no complaints, no incidents, and no playing to the cameras."

Television has not yet reached Georgia's trial courts, but it is only a matter of time. In October 1977, the Supreme Court approved the first plan for trial court coverage by the electronic media.

Florida

On July 5, 1977, the Florida Supreme Court began a one-year experiment allowing cameras in both the appellate and trial courtrooms. The experiment is unusual in that Florida became the only state to permit camera coverage without the consent of courtroom participants.[46]

In an effort to ensure that court proceedings would not be disrupted, the Supreme Court set down specific guidelines for the pilot program, including a list of approved cameras and tape recorders by brand name.

Some of the more important guidelines state:

—Only one television camera, one still photographer, and one audio system shall be permitted in the courtroom.

—Equipment must not produce distracting sound or light. No auxiliary lighting may be used.

—There shall be no audio pickup between attorneys and their clients, between counsel of a client, or between counsel and the presiding judge held at the bench.

—No media materials from trials during the pilot program may be used as evidence in any related proceedings.

To date, courtroom proceedings have been broadcast an average of three times a week in Florida. (Judging from experience in other states, this will probably decrease substantially when the novelty wears off.) The reaction so far has been predominantly favorable.

"I was pleased," said Judge C. Michael Shallowag. "I didn't think the filming was distracting or disruptive, which was my biggest fear since I was opposed to it initially."

The final verdict on Florida's cameras in the courtroom pilot project will not be rendered until June 30, 1978, when the experiment ends. At that time, judges, media, and courtroom participants will furnish the Supreme Court with a report of their experiences so that the court can determine whether the canon should be modified to allow permanent broadcast coverage in the courts of Florida.

Kentucky

On August 23, 1977, fourteen judges from the Jefferson Circuit Court (the circuit encompassing Louisville) signed the following resolution:

> In recognition of the First Amendment of the Constitution of the United States, Sections 8 and 14 of the Bill of Rights of the Constitution of Kentucky, and in the interest of the general public in the judicial system, the undersigned judges of this Court grant unrestricted access to their respective Courts to the media (press, television, radio), except as hereinafter provided:
>
> Unrestricted access includes, but is not limited to, filming and recording of public trials.
>
> The undersigned judges, however, reserve the right to restrict access in the following situations:
>
> 1) If the media coverage becomes disruptive to the orderly proceedings;
>
> 2) in sensitive situations involving children and in any matters of domestic relations.

The decision of fourteen of the sixteen circuit judges to allow cameras in their courtrooms was made after a demonstration in June of the unobtrusive operation of broadcast equipment.

The resolution is unusual in that it grants the broadcast media unrestricted access to the courtroom; that is, permission of the parties need not be obtained.

New Hampshire

On October 12, 1977, the Supreme Court approved an amendment to the

Code of Judicial Conduct (Supreme Court Rule 25) to allow recording, photographing, and radio and television broadcasting in New Hampshire's Superior Court (the trial court of general jurisdiction). The decision on whether to allow broadcast coverage of a trial will be left to the discretion of the trial judges, provided that disruption, inconvenience to the parties, and other reasonable objections are considered. The rules, however, contain no provision requiring the written permission of the parties involved.

On December 6, 1977, an order was adopted allowing broadcast coverage of oral arguments heard before the New Hampshire Supreme Court. Prior notice to the clerk and consent of the court are prerequisites for such coverage.

The rule changes became effective January 1, 1978, and as of this writing, there have not been any trials televised pursuant to the change in rule.

FUTURE DEVELOPMENTS

The status of camera coverage of court proceedings is changing rapidly. As of December 1977, four states were considering some modification of their judicial canons governing broadcasting of trials, and the ABA House of Delegates again addressed the issue at their February 1978 midyear meeting.

On June 24, 1977, several Montana newspeople made a presentation regarding camera coverage of courtroom proceedings before a meeting of the Montana Bar Association. The presentation, made at the suggestion of Chief Justice Paul Hatfield, included videotapes, film strips, and a panel discussion involving representatives of the news media and judges who had presided over televised trials. As a result of the favorable reaction to the presentation, the Supreme Court of Montana appointed a committee to investigate and consider proposed changes to Canon 35 of the Canons of Judicial Ethics that currently bars cameras from the courtroom. Montana Judicial Canon 35 notwithstanding, District Court Judge Gordon Bennett, formerly a news reporter who believes that the courtroom falls under Montana's open meetings statute, [47] has allowed a reporter to record a kidnaping trial for radio broadcast.

In July 1977, Idaho Chief Justice Joseph McFadden, in his State of the Judiciary address, called for the Supreme Court to consider allowing television broadcasting of judicial proceedings in the Idaho Supreme Courts.[48] The Idaho Supreme Court has yet to reach a determination in the matter.

In West Virginia, Professor William Seymour of the West Virginia University School of Journalism has conducted a demonstration of the use of modern broadcasting equipment in the courtroom. Circuit Judge Lawrence Starcher, who witnessed the demonstration, has agreed to allow camera coverage of a trial of his choice, provided the attorneys involved give their consent. Professor Seymour is hopeful that the results of this experiment will be presented to the West Virginia Supreme Court and eventually lead to a modification of the state's current antibroadcast stance.

Members of the broadcast media in Minnesota have approached that state's chief justice for a change in the court rules restricting broadcasting. Chief Justice Sheran has indicated he would like to have the recommendation of the bar before modifying the rule. In their November 1977 meeting, the Board of Governors of the Minnesota Bar unanimously approved a set of guidelines for broadcast coverage of court proceedings. A media presentation will be made at the next convention in June 1978, at which time the state bar association will vote on the proposed guidelines.

New York's rules governing judicial conduct currently indicate that with appropriate safeguards, a judge could properly admit camera crews into court to record trials.[49] To date, this proviso has apparently not been used to permit broadcasting in the courtroom.

At the American Bar Association's annual meeting in August 1977, the Legal Advisory Committee on Fair Trial and Free Press of the ABA reported that it "favors the emerging trend" toward allowing cameras in the courtroom. Taking the position that electronic coverage does not inherently interfere with the right to a fair trial, the committee said, "As long as this coverage does not upset courtroom decorum or unduly distract trial participants, there is no sound reason for refusing to allow it."[50]

The committee's guidelines were refined and presented in their final form for action by the ABA House of Delegates at the ABA's midyear meeting in February 1978.

In July 1977, Richard Spangler, President of the Radio and Television News Association of Southern California (RTNASC), taped a divorce proceeding taking place in the Los Angeles Superior Court. Although all parties had consented to the recording, Judge Harry T. Shafer invoked the ban contained in California Judicial Conduct Rule 980[51] and took custody of the tapes. As a result, the RTNASC intends to seek a writ of mandate to overturn California Rule 980. According to the Association's attorney, the issue will be carried to the United States Supreme Court if necessary.

CONCLUSION

It is difficult to measure the relative merits of the arguments for and against televising trials. Both sides have their ardent supporters. Every cry of "psychological disturbance" is met with an equally loud response of "freedom of the press." Nevertheless, the telling voice of experience cannot be ignored. In the jurisdictions that have allowed cameras in the courtroom, the response has been overwhelmingly favorable.

The broadcast media have not, as opponents feared, inundated the courts. The high cost involved in covering a trial (estimated at $12,000 for the five and one-half hour telecast of the Solarzano trial in Nevada) combined with the great demands of personnel time, which most television and radio news departments can ill afford, have kept broadcast coverage of trials to a minimum. In twenty-one years of trial broadcasting in Colorado, the grave apprehensions postulated by opponents to televised trials have not come to pass. Significantly, in Colorado there has not been one reversal due to television's alleged infringement of one's right to a fair trial.

Safeguards such as pooling arrangements, the requirement of written consent of all parties, and the ability of any witness to halt the broadcasting or photographing by his or her expressed objection have been and should continue to be provided to ensure that the administration of justice is not hindered. The use of these safeguards should allow every state in the country to open the doors of its courtrooms to the broadcast media, if only on an experimental basis. □

See chart on page 55

Update

Since the writing of this article a number of important developments have occurred that indicate television may have begun to have an effect on the courts.

After six months of the one-year experiment involving caseloads in Florida courtrooms, a recent report, "Conduct of Audio-Visual Trial Coverage," considers the pilot experiment a success. An example is the conduct of the Zamora trial viewed by millions as a regularly scheduled program on WPBT.

The Conference of Chief Justices discussed and debated the pros and cons of the media coverage of court proceedings during its midyear meeting held in New Orleans, February 9-10. The Conference adopted a resolution for appointment of a committee "to study the possible amendment of Canon 3A(7) of the Code of Judicial Conduct to permit electronic and photographic coverage of the courts." A committee of 15 chief justices has been named with Chief Justice Ben F. Overton of Florida as the chairman. The committee will present its report and recommendations at the 1978 annual meeting to be held in Burlington, Vermont.

Fair Trial and Free Press Committee of the American Bar Association during its midwinter meeting in New Orleans, February 8-15, released a revised draft of proposed standards that, for the first time, recognizes that cameras in the courtroom are "not . . . inconsistent with the right to a fair trial."

The draft, which the ABA will consider at its annual meeting in August, states that "such coverage should be permitted if the court in the exercise of sound discretion concludes that it can be carried out unobtrusively and without affecting the conduct of the trial."

Four more states—Louisiana, Minnesota, Montana, and Wisconsin—in addition to the nine listed in the article, now permit partial or experimental television of their courts.

NOTES

[1]This article deals with still camera, radio, and television coverage of trials. Unless otherwise noted, the terms *camera coverage, broadcasting,* and *televising of trials* are used interchangeably.

[2]American Bar Association Canons of Judicial Ethics No. 35 (1937).

[3]Warden, "Canon 35: Is There Room for Objectivity?" 4 *Washburn Law Journal* 211 (1965).

[4]Special Committee on Proposed Revision of Judicial Canon 35, *Reports of American Bar Association* (1963), vol. 88, p. 305.

[5]*Id.* at 305.

[6]*Id.* at 308.

[7]381 U.S. 532 (1965).

[8]Warden, *supra* note 3, at 228.

[9]*In re Hearings Concerning Canon 35,* 132 Colo. 591, 296 P.2d 465, 470 (1956).

[10]Cantrall, "A Country Lawyer Looks at Canon 35," 47 *ABA Journal* 761 (1961).

[11]381 U.S. at 545-547.

[12]384 U.S. 333 (1966).

[13]Roberts, "The Televised Trial: A Perspective," 7 *Cumberland Law Review* 323, 333 (1976).

[14]381 U.S. at 571 (1965).

[15]Simonberg, "TV in Court: The Wide World of Torts," *Juris Doctor,* April 1977 at 44, quoting Richard M. Schmidt, Jr., general counsel to the American Society of Newspaper Editors.

[16]*Whitney* v. *California,* 274 U.S. 357, 376 (1927).

[17]*United States v. Dickinson,* 465 F.2d 496, 507 (5th Cir. 1972), quoting *Craig v. Harney,* 331 U.S. 367, 376 (1946).

[18]Roberts, *supra* note 13, at 335.

[19]381 U.S. 532 (1965).

[20]*Id.,* at 542. See *id.* at 596 (concurring opinion).

[21]Daly, "Radio and Television News and Canon 35," 6 *Nebraska State Bar Journal* 125 (1957).

[22]"In all criminal proceedings, the accused shall enjoy the right to a speedy and public trial . . . ." *U.S. Constitution,* Amendment VI.

[23]*People v. Kerrigan,* 73 Cal. 222, 224, 14 P. 849, 850 (1887).

[24]*United States ex rel. Orlando v. Fay,* 350 F.2d 967, 971 (2d Cir. 1965), *cert. denied,* 384 U.S. 1008 (1966).

[25]*United States v. Kobli,* 172 F.2d 919, 924 (3d Cir. 1949).

[26]381 U.S. at 588 (Harlan, J., concurring).

[27]*In re Hearings Concerning Canon 35,* 132 Colo. 591, 296 P.2d 465, 469 (1956).

[28]The states are covered in rough chronological order according to the date when television coverage was first allowed. A definite chronological ranking is difficult, as some states—such as Texas—have changed their regulations several times.

[29]Remarks by Colorado Chief Justice Edward Pringle to the Montana Bar Association (June 25, 1977).

[30]*In re hearings Concerning Canon 35,* 132 Colo. 591, 296 P.2d 465 at 468 (1956).

[31]Colorado Code of Judicial Conduct No. 3A(8)-(10).

[32]Warden, *supra* note 3, at 228. Justice Hall's speech is reported in abbreviated form in 48 *ABA Journal* 1120 (1962).

[33]*Id.* at 228.

[34]Simonberg, *supra* note 15, at 44.

[35]*Id.* at 44.

[36]"Judicial Canon 28 of the Integrated State Bar of Texas," 27 *Texas Bar Journal* 102 (1964).

[37]381 U.S. 532 (1965).

[38]*Bird v. State,* 527 S.W.2d 891, 895-896 (Tex. Crim. App. 1975).

[39]Alabama Canons of Judicial Ethics No. 3A(7A)(a).

[40]*Id.,* No. 3A(7A)(b)(c).

[41]*Id.,* No. 3A(7A)(c).

[42]*Id.,* No. 3A(7B).

[43]Associated Press Managing Editors Association, "Cameras in the Courtroom: How to Get 'Em There," at 11 (an Associated Press Managing Editors Association Freedom of Information Report).

[44]Nevada Supreme Court Rule 240.

[45]Robert Stoldal, News Director of KLAS TV, indicated that it took several months to choose a suitable trial for broadcast. One defendant who gave his permission pleaded guilty before the trial. Another, while out on bail, was shot and killed during a holdup.

[46]While consent of the courtroom participants is not formally required in New Hampshire, the trial judge must take into account inconvenience to the parties and other reasonable objections. See section on New Hampshire, *infra.* See also section on Kentucky, *infra.*

[47]Montana Revised Codes Annotated, §82-3405.

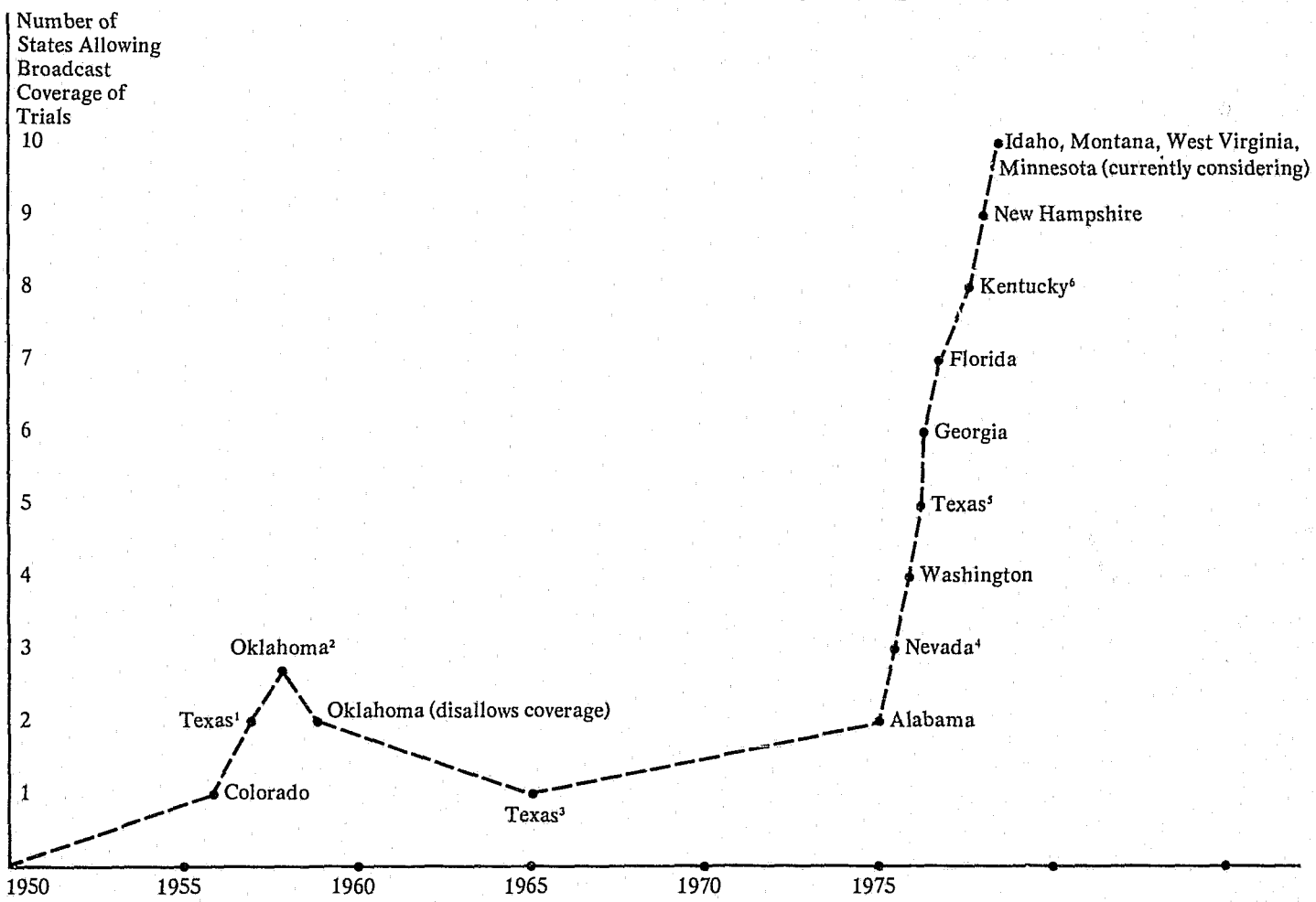
[48]Idaho Chief Justice McFadden said, "There is a need to open up judicial proceedings to the public and provide a heightened awareness of legal rights and responsibilities. Television drama and government scandals involving lawyers are not the best conveyors of understanding about the courts and the legal community."

[49]Judicial Conference Rules §33.3(a) (7), 25 N.Y. Civ. Prac. Supp. 54-55 (1976) (permission of Chief Judge of Court of Appeals or Presiding Justice of Appellate Division required). App. Div. Rule §605.1 at 125. *Cf.* N.Y. Code of Judicial Conduct, Canon 3(A)(7) (McKinney 1975).

[50]"Fair Trial Guides Have New Tone, Emphasis," 63 *American Bar Journal* 1186 (September 1977).

[51]Rule 980 allows photographing, recording, or videotaping to perpetuate the record but mandates that "the court must take adequate precaution to assure that any photographs, tapes or recordings of court proceedings will remain in the custody of the court or its offices and will be used only for judicial purposes."

HISTORY OF BROADCAST COVERAGE OF TRIALS



[1]Report of Special Bar Committee recommends allowing trial coverage.

[2]The Oklahoma Supreme Court held in *Lyles v. State* (Okla. 1958) 330 P.2d 734 that trial judge may allow television coverage. In 1959, Oklahoma adopted a restrictive canon prohibiting television coverage.

[3]Coverage in Texas slackens as a result of *Estes v. Texas* U.S. Supreme Court decision.

[4]Although Nevada adopted a permissive canon in 1965, first major television coverage did not take place until June 1976.

[5]Texas modifies canon to allow coverage in appellate courts.

[6]Jefferson County, Kentucky, allows cameras in the courtroom.

Council of State Court Representatives

Alabama
C. C. Torbert, Jr.
Chief Justice, Supreme Court

Alaska
Roger G. Connor
Justice, Supreme Court

Arizona
Frank X. Gordon, Jr.
Justice, Supreme Court

Arkansas
C. R. Huie, Executive Secretary
Judicial Department, Supreme Court

California
Rose Elizabeth Bird
Chief Justice, Supreme Court

Colorado
James D. Thomas
State Court Administrator

Connecticut
John P. Cotter
Justice, Supreme Court

Delaware
Daniel L. Herrmann
Chief Justice, Supreme Court

District of Columbia
Theodore R. Newman, Jr.
Chief Judge, Court of Appeals

Florida
Arthur J. England, Jr.
Justice, Supreme Court

Georgia
Hiram K. Undercofler
Presiding Justice, Supreme Court

Hawaii
Tom T. Okuda, Director
Administrative Services, District Courts

Idaho
Charles R. Donaldson
Justice, Supreme Court

Illinois
Joseph H. Goldenhersh
Justice, Supreme Court

Indiana
Richard M. Givan
Chief Justice, Supreme Court

Iowa
W. W. Reynoldson
Justice, Supreme Court

Kansas
David Prager
Justice, Supreme Court

Kentucky
James S. Chenault
Judge, 25th Judicial District

Louisiana
Pascal F. Calogero, Jr.
Justice, Supreme Court

Maine
Sidney W. Wernick
Justice, Supreme Judicial Court

Maryland
William H. Adkins II
State Court Administrator

Massachusetts
Robert M. Bonin
Chief Justice, Superior Court

Michigan
John P. Mayer
Associate Administrator

Minnesota
Laurence Harmon
State Court Administrator

Mississippi
R. P. Sugg
Justice, Supreme Court

Missouri
John E. Bardgett
Judge, Supreme Court

Montana
Daniel J. Shea
Justice, Supreme Court

Nebraska
Paul W. White
Chief, Justice, Supreme Court

Nevada
Howard W. Babcock
Judge, District Court

New Hampshire
John W. King
Justice, Superior Court

New Jersey
Richard J. Hughes
Chief Justice, Supreme Court

New Mexico
John B. McManus, Jr.
Chief Justice, Supreme Court

New York
Richard J. Bartlett
State Administrative Judge

North Carolina
Bert M. Montague, Director
Administrative Office of the Courts

North Dakota
William L. Paulson
Justice, Supreme Court

Ohio
C. William O'Neill
Chief Justice, Supreme Court

Oklahoma
B. Don Barnes
Justice, Supreme Court

Oregon
Loren D. Hicks
State Court Administrator

Pennsylvania
Samuel J. Roberts
Justice, Supreme Court

Rhode Island
Walter J. Kane
Court Administrator

South Carolina
J. Woodrow Lewis
Chief Justice, Supreme Court

South Dakota
Roger L. Wollman
Justice, Supreme Court

Tennessee
Cletus McWilliams
Executive Secretary, Supreme Court

Texas
Joe R. Greenhill
Chief Justice, Supreme Court

Utah
Thornley K. Swan
Chief Judge, Second Judicial Circuit

Vermont
Albert W. Barney, Jr.
Chief Justice, Supreme Court

Virginia
Albertis S. Harrison, Jr.
Justice, Supreme Court

Washington
Orris L. Hamilton
Justice, Supreme Court

West Virginia
Fred H. Caplan
Chief Justice, Supreme Court

Wisconsin
Nathan S. Heffernan
Justice, Supreme Court

Wyoming
Rodney M. Guthrie
Chief Justice, Supreme Court

American Samoa
K. William O'Connor
Chief Justice, High Court

Guam
Paul J. Abbate
Acting Chief Judge of the Courts

Puerto Rico
Jose Trias Monge
Chief Justice, Supreme Court

Virgin Islands
Eileen R. Petersen
Judge, Territorial Court

END