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Eye-Witness: Television's Expanding Coverage of the Court

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Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975) (stating that the ultimate aim of copyright law is to stimulate the creation of useful works for the general public good).

6. *See* 17 U.S.C. §§ 101-914; *see also* 1 MELVILLE NIMMER ON COPYRIGHT, § 1.03[A], at 1-31.

7. 17 U.S.C. § 106 (1982) (This section grants "Exclusive Rights in Copyrighted Works" and begins with the phrase "Subject to sections 107 through 118...").

8. 17 U.S.C. § 107 (1982). *See also* Lisa Vaughn Merrill, *Should Copyright Law Make Unpublished Works Unfair Game?,* 51 OHIO ST. L.J. 1399, 1400 (Fall 1990).

9. 17 U.S.C. § 107.

10. The owner of a copyright has the following exclusive rights:(1) the reproduction right; (2) the derivative work right; (3) the distribution right; (4) the performance right (publicly); and (5) the display right (publicly). *See* 17 U.S.C. § 106.

11. Andrea D. Williams, *Fair Use Doctrine and Unpublished Works,* 34 How. L.J. 115 (1991). See 17 U.S.C. § 107.

12. Vincent H. Peppe, *Fair Use of Unpublished Materials in the Second Circuit: The Letters of the Law,* 54 BROOKLYN L. REV. 417, 419 (1988).

13. 17 U.S.C. § 107.

14. *Id.*

15. H.R. REP. No. 836, 102nd Cong., 2nd Sess. 3 (1992).

16. Harper & Row Publishers, Inc. v. Nation Enter., 471 U.S. 539 (1985) (finding that defendant had the intended purpose of supplanting the copyright holder's right of first publication).

17. *Id.*

18. *Id.* at 542.

19. *Id.*

20. *Id.* at 543.

21. *Id.*

22. Harper & Row, Publishers, Inc. v. Nation Enter., 557 F. Supp. 1067 (S.D.N.Y. 1983), *rev'd,* 723 F.2d 195 (2nd Cir. 1983), *rev'd,* 471 U.S. 539 (1985).

23. Harper & Row, Publishers, Inc. v. Nation Enter., 557 F.Supp. at 1072-1073.

24. Harper & Row, Publishers, Inc. v. Nation Enter., 723 F.2d at, 209-209 (2nd Cir. 1983), *rev'd,* 471 U.S. 539 (1985).

25. Harper & Row, Publishers, Inc. v. Nation Enter., 439 U.S. at, 569 (1985).

26. *Id.* at 554.

27. *Id.* at 553.

28. *Id.* at 564.

29. *Id.* at 569.

30. Salinger v. Random House, 811 F.2d 90 (2nd Cir. 1987); New Era Publ. Int'l v. Henry Holt & Co., 873 F.2d 576 (2d Cir.), *reh'g denied,* 884 F.2d 659 (2d Cir. 1989), *cert. denied,* 493 U.S. 1094 (1990). *See* 138 CONG. REC., S17358 (daily ed. October 7, 1992) (joint statement).

31. Salinger v. Random House, 811 F.2d at 92-94.

32. *Id.* at 96.

33. New Era Publishers Int'l v. Henry Holt & Co., 695 F. Supp. 1493, 1497 (S.D.N.Y. 1988).

34. *Id.* at 1498.

35. *Id.*

36. *Id.* at 1507-1508.

37. Salinger v. Random House, 811 F.2d at 583.

38. New Era Publishers Int'l v. Henry Holt & Co., 873 F.2d at 584. In *New Era,* the court stated that the publisher of a biography on L. Ron Hubbard, the founder of the Church of Scientology, had infringed upon copyrights of Hubbard's unpublished diaries and journals by publishing portions of them. However, the court did not order an injunction due to plaintiff's unreasonable delay in commencing the lawsuit. *Id.*

39. Williams, *supra* note 11, at 129.

40. 138 CONG. REC. S17358, *supra* note 30.

41. Diane Conley, *(Fair Use, Fair Game),* LEGAL TIMES, June 17, 1991, at 45.

42. S. REP. No. 141, 102nd Cong, 1st Sess. 4 (1991).

43. *Id.*

44. *Id.*

45. *Id.* at 5.

46. 17 U.S.C. § 107.

47. Search of LEXIS, LEGIS library, Bill Tracking file (April 16, 1993).

48. Pub. L. No. 102-492, *supra* note 1.

49. 138 CONG. REC., S17358, *supra* note 30.

50. *Id.*

51. H. REP. No. 836, *supra* note 15, at 9.

52. Harper & Row Publishers, Inc. v. Nation Enter., 471 U.S. at 553. *See* 138 CONG. REC. S.17358, *supra* note 30.

53. H. REP. No. 836, *supra* note 15, at 9.

54. *Id.*

55. Pierre N. Leval, Comment, *Toward a Fair Use Standard,* 103 HARV. L. REV. 1105, 1130 (1990).

56. H. REP. No. 836, *supra* note 15, at 4.

Eye-Witness: Television's Expanding Coverage of the Court

"The primary purpose of the constitutional guarantee of a free press was... to create a fourth institution outside the Government as an additional check on the three official branches."

— Justice Potter Stewart[1]

From the murder trial of Lindberg baby kidnapper Bruno Hauptmann in 1935[2] to the more recent rape trial of William Kennedy Smith,[3] the national debate continues over the issue of whether and under what circumstances cameras should be permitted in the courtroom. Proponents of electronic media coverage in the halls of justice have long waved the standards of the First Amendment's freedom of press and the Sixth Amendment's right to a public trial.[4] Opponents have decried the media as intrusive and voyeuristic in an atmosphere that some hold as sacred as the confessional.

Nearly sixty years ago, the flashbulbs and microphones wielded by the media at the Hauptmann trial were denounced as "inconsistent with the dignity and decorum of judicial proceedings."[5] Today, the physical presence of a television camera in a courtroom is no longer viewed as undignified. But objections remain as to the effect that electronic media coverage may have on the audiences they reach, and more importantly, on the testimony of witnesses.[6]

Part I of this Update will examine the history of cameras in the courtroom and the reasons why their acceptance in federal and state courts had been barred until relatively recently.[7] Part II will analyze the rules governing the use of cameras in federal courtrooms under a federal experimentation program currently in progress. Finally, Part III will balance the right of the trial victim or witness to block the televising of his or her testimony against the public benefits from viewing "real" court proceedings devoid of any fictional television drama. This Update concludes with an appraisal of expansion of cameras in the courtroom on a case-by-case basis.

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HISTORY OF COURTROOM MEDIA COVERAGE

Over a half century ago, when major cities had three or four daily newspapers, media coverage of courtroom activities was in its infancy stages, but the American public was already exercising its right to know that justice was being served.[8] In 1925, an attentive audience listened while Chicago-based WGN Radio broadcasted arguments proffered in support of the theories of evolution and creationism during the famous Scopes "Monkey" trial.[9] By 1935, when over 130 reporters and photographers converged on the courtroom where Bruno Hauptmann was being tried, the competition among the journalists was so fierce that many used hidden cameras to shoot still photos of the witnesses in defiance of a court order prohibiting such activities.[10]

The media outpouring surrounding the Hauptmann trial led to the adoption by the American Bar Association of Canon 35 of the Canons of Judicial Ethics in 1937.[11] The Canon declared that proceedings in court were to be conducted with "dignity and decorum."[12] Photography, whether during court sessions or during recess, as well as radio broadcasts, were deemed to "detract from the essential dignity of the proceedings, degrade the court and create misconceptions... in the mind of the public and should not be permitted."[13] In 1941, Canon 35 was amended expressly to prohibit radio broadcasts from the courtroom, and again in 1952 to prohibit television broadcasts.[14]

As reflected in the ABA rules and regulations, courts were initially concerned with the physical encumbrance on the courtroom setting caused by electronic broadcasting.[15] Broadcast technology largely was in its infancy stage until the 1960s, and as a result, both still photography and motion picture cameras were bulky and required bright lighting to be effective.[16] The mere presence of media journalists in court was distracting and annoying to all of the parties present to participate in or view the trial.

Concerns surfaced in the 1960s regarding the constitutional rights of a defendant faced with a barrage of television cameras. The case of *Estes v. Texas* provided the United States Supreme Court its first opportunity to examine the constitutional problems presented by cameras in the courtroom.[17] During the 1965 trial of a defendant indicted by a Texas county grand jury for swindling, the court allowed a booth to be erected in the courtroom in which television cameras and equipment were to be limited.[18] Although only the State's opening and closing arguments and the jury verdict were broadcast live, the videotape coverage of the entire trial was extensively broadcasted during regularly scheduled news programs. Both the trial court and the Appellate Court of Texas rejected Estes' claim that he had been denied his due process rights guaranteed under the Fourteenth Amendment as a result of the televising of his trial.[19]

In reversing Estes' conviction on due process grounds,[20] the Supreme Court recognized the tension between the First Amendment grant of freedom of the press[21] and a defendant's right to be free from the use of television equipment in the courtroom that would potentially jeopardize a fair trial.[22] Justice Clark, writing for the majority, said that the "circus-like atmosphere created by broadcasters in the courtroom" during the defendant's pretrial hearing and trial deprived Estes of his Sixth Amendment right to a fair trial and his due process rights under the Fourteenth Amendment.[23] The Court enumerated the aspects of television coverage which, in its opinion, contributed to the unfair result for Estes. These aspects included: (1) improper influence on the impartiality of jurors by emphasizing the notoriety of the trial;[24] (2) influencing the demeanor and delivery of witnesses;[25] (3) distracting judges[26]; and (4) imposing "pressures" on the defendant similar to those imposed by a "police lineup."[27]

The *Estes* Court suggested, however, it would reconsider its position on cameras in the courtroom if the technology became less intrusive.[28] In the years following *Estes,* television underwent dramatic changes as cameras became smaller and more manageable. The need for a bright lighting source significantly diminished, as did the need for bulky transmitter cables. In addition, by the late 1960s and early 1970s, television replaced newspapers as the primary source of information for the American public.[29]

The door was opened for experimentation with electronic media coverage of state trials with the 1981 Supreme Court decision in *Chandler v. Florida.*[30] At the time of trial, Florida had the most liberal rules in effect regarding broadcast of trial proceedings.[31] The defendants, Miami Beach police officers convicted of conspiracy to commit burglary and grand larceny,[32] appealed their convictions claiming that the televising of parts of their trial denied them a fair and impartial trial.[33] Florida's Appellate Court affirmed the lower court's decision finding there was no evidence that the television broadcasts hampered the defendants in the presentation of their case or impaired the fairness of the trial.[34] The Florida Supreme Court denied review.[35]

Reviewing the *Chandler* appeal on a grant of certiorari, the United States Supreme Court ruled that despite the defendants' objection to the presence of the electronic media, Florida could permit television broadcasts without violating the defendants' Sixth Amendment rights.[36] It interpreted the earlier *Estes* decision as not imposing an absolute ban on television coverage of trials or on state experimentation with emerging television technology.[37] Absent a showing of prejudice to the constitutional rights of the defendants, the Court was reluctant to endorse or invalidate Florida's experimental television presence

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in its courtrooms.[38]

Nevertheless, the Court did articulate parameters by which a violation of a defendant's due process could be measured in similar situations: (1) if the presence of television cameras "compromised the ability of the jury to judge the defendant fairly;" or (2) if "broadcast coverage of [the] particular case ha[s] an adverse impact on the trial participants sufficient to constitute a denial of due process."[39] The defendant was required to demonstrate "prejudice of [a] constitutional dimension" for the media coverage to be deemed a due process violation.[40] The defendants in *Chandler* failed to demonstrate that they had been unduly prejudiced by the broadcast of their trial.

THE FEDERAL COURT TV EXPERIMENT

At the time of the *Chandler* decision in 1981, only twenty-seven states allowed limited courtroom access to electronic media.[41] Today, due in large part to the increasing sophistication of both the electronic media and the viewing audience, forty-five states allow television cameras into court with varying degrees of accessibility.[42] Presently, the District of Columbia, Indiana, Mississippi, Missouri, South Carolina and South Dakota are the only jurisdictions to retain an absolute ban on electronic media coverage.[43]

A potentially historic step in the relationship between the television media and the court occurred July 1, 1991, when six federal district courts and two federal appellate courts broke tradition and opened their corridors to television cameras.[44] Previously, the American Bar Association Judicial Canon 3A(7)[45] and its amendments were interpreted to shield federal courtrooms from television access altogether.[46] Although judicial canons are not legally binding, the legal profession recognizes them as the primary standards by which the decorum and integrity of the legal process are measured.[47] However, in 1990, the Judicial Conference of the United States,[48] the governing body of the federal courts, adopted an experimentation with television broadcasts of federal civil court proceedings for a period from July 1, 1991 until June 30, 1994.[49] The Judicial Conference's actions were motivated by its desire to "open the courts to public scrutiny [and] develop [its own] guidelines for audio-visual coverage before Congress imposed its own."[50]

The federal district court systems which agreed to participate in the television experiment include the Southern District of Indiana, the District of Massachusetts, the Eastern District of Michigan, the Southern District of New York, the Eastern District of Pennsylvania, and the Western District of Washington.[51] Pilot programs also are being tried in the Second Circuit Court of Appeals in Manhattan and the Ninth Circuit Court of Appeals in San Francisco.[52]

According to the rules governing the federal experiment program, the court must be provided with "reasonable advance notice" of a media request to televise a trial.[53] Broadcasters must use a "pool" system where only one news organization is responsible for the actual live film footage being broadcast from the courtroom to all of the interested media[54] and are prohibited from filming the jury or any conference between attorneys and their clients or between counsel and the judge.[55] The presiding judge, at his or her discretion may "refuse, limit or terminate media coverage" of the trial to protect the rights of the parties, the witnesses, and "the dignity of the court."[56] However, the permission or denial of television access to a federal court does not "create any litigable rights or right to appellate review."[57]

Since its inception, the federal courts' foray into television broadcasting has met with modest success, particularly in the Southern District of New York.[58] However, the conspicuous absence of debate over the program following its introduction may signal a disinterest by the public in federal court proceedings. One commentator points to the ban on covering federal criminal trials as the cause.[59] Under both the rules implemented by the Judicial Conference that govern the experiment and the Federal Rules of Criminal Procedure, broadcasting of federal criminal trials is expressly prohibited.[60] But arguably, criminal matters can be more easily followed by both broadcast news organizations and the viewing public than civil trials.[61] Civil matters may also be "less compelling and have less news value"[62] than the more newsworthy federal prosecutions. However, the question of television coverage of federal courts should not be based solely on the number of viewers who watch the courtroom drama on their televisions. "Leaving the issue of (courtroom) press... access entirely to the tug and pull of the market is both unseemly and unwise,"[63] notes Washington D.C. attorney Timothy B. Dyk, who represents several media organizations lobbying for elimination of the electronic media access ban. Rather, the decision to make the experiment a permanent part of the federal system should be predicated upon the effect it has on the court, the participating parties, and the public. The federal courts and the state courts interested in granting television cameras a permanent access status must engage in a balancing of concerns of the parties as enumerated by the *Chandler* Court.

A BALANCE OF CONCERNS

The *Chandler* Court set the standards by which federal and state courts must strive to strike a balance between the interests of the litigating parties and the interests of the public via the media. The struggle that courts engage in to find this fair and just balance of concerns, however, is significant due, in large part, to the lack of clear balancing guidelines. The court's struggle was evidenced in *United States v. Torres,* where the United States District Court for the Northern District of Illinois ultimately denied the

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request of the National Broadcasting Company (NBC) and the American Broadcasting Companies (ABC) to use videotape and audiotape equipment during the trial of two Puerto Rican patriots charged with conspiracy against the United States.[64] However, the court subsequently allowed NBC and ABC post-trial access to the audiotapes and videotapes introduced into evidence by the prosecution, based on a finding that the defendants had not demonstrated that justice required withholding of the tapes in contravention to the strong common law right of the public to inspect and disseminate judicial records.[65]

Determining that in-court media coverage would endanger the *Torres* defendants' right to a fair trial, District Judge George Leighton remarked, "[t]o begin this trial from the posture of allowing two of the country's leading broadcast corporations instantaneous access to dramatic evidence that casts invidious reflections on the defendants is to start this trial on the wrong footing."[66] Lacking clear precedent, the court found the use of cameras in the courtroom was an unallowable intrusion on the trial process; it based its ruling on a spectrum of authority, including the decisions of both *Estes* and *Chandler*, the Judicial Canon 3A(7), the Federal Rule of Criminal Procedure 53, and Rule 1.52 of the General Rules of the United States District Court for the Northern District of Illinois.[67] Acknowledging that the principal purpose of the trial judge is assuring fairness to all participants in the courtroom, Judge Leighton nevertheless explained:

> A criminal trial is not designed as a forum in which entities of the news media can flex their First Amendment muscles. Nor is it a device attuned to the task of education absent members of the public to what occurs in a particular criminal case, selected by broadcasting corporations for attention in accordance with their standard of what is newsworthy.[68]

The *Torres* court's decision served as a reminder to the television media that, under several strands of authority, its access to courtrooms is not an absolute right. However, while the court properly engaged in a balancing of the interests of the various parties, by allowing after-the-fact media access to trial evidence, it seemed to mitigate its purpose in protecting the defendants' fairness and due process interests in the first place. Thus, as televised courtroom proceedings increase in their popularity, the need for more clearly defined judicial guidelines is apparent.

Public interest in, or perhaps real awareness of, television access to courtrooms surged in late 1991 and early 1992 with the successive broadcasts of the William Kennedy Smith rape trial in Florida in December 1991, the murder trial of Jeffrey Dahmer in January 1992, and the trial of the Los Angeles County police officers accused of beating Rodney King in March 1992. While under a *Chandler* analysis these three televised trials raised no threats to the respective defendants' rights to fair trials and the due process of law, they did reignite debate over the rights of the parties involved in a court proceeding to have privacy from the camera's unblinking eye. Concerns were raised regarding whether the broadcasting of "real life" courtroom drama was truly education or whether it merely panders to a public's prurient interest. Finally, questions continue to be raised regarding the level of freedom or restrictions to be granted to the broadcast media in light of a balancing of the above factors.

"Americans have been courtroom television addicts for years."[69] From *Perry Mason* to *Matlock, L.A. Law* to *Law & Order*, the television viewing audience has been intrigued by court proceedings that ultimately decide "Who done it?" Interestingly, the very date on which television cameras were allowed into federal courts as part of the experimental program, the nation's first television network devoted exclusively to coverage of federal and state court proceedings went on the air. The Court Television Network (Court TV)[70] broadcasts twenty-four hours of courtroom coverage in a style that was initially forecasted by former Chief Justice Warren Burger. As early as 1986, Burger considered allowing television coverage of federal court proceedings "if there was a way to broadcast the entire proceeding" in a style similar to C-SPAN's coverage of the House and Senate.[71]

In December 1991, over 3 million viewers watched the unfolding rape trial of William Kennedy Smith on the Cable News Network (CNN) or on Court TV, both of which carried the trial live.[72] The opponents of cameras in court decried the broadcasts as intrusive on the privacy interest of both the victim and the accused.[73] Due to the fact that television is viewed as a more influential medium than print, critics argue that the privacy interests of trial participants should allow for the exclusion of television cameras in court even when the press generally is not excluded.[74]

Based on the nature of a rape trial, the accuser is often required to reveal highly personal, and often embarrassing, facts in an open court.[75] "Gavel-to-gavel coverage [may] magnify the misery... as the accuser's face is concealed on camera in a way that protects her dignity but also turns her into a cipher."[76] However, proponents of television access to trials, including rape trials, counter the argument by pointing to the testimony of the alleged victim in the Smith trial, who was not required in either direct or cross-examination to expose her personal sexual history.[77]

Critics also asserted that the broadcasting of trials merely serves the prurient interest of the public.[78] One commentator pointed out that the CNN network regularly interrupted its programming of the Kennedy

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Smith trial for commercial breaks, often during critical live testimony.[79] National network news programs and local news stations were criticized for airing sexually graphic testimony during their news programs, yet these same networks refuse to broadcast condom commercials.[80]

Steven Brill, the founder of Court TV, believes that while some viewers may watch the courtroom trials for voyeuristic reasons, the very fact that the trial stories being aired involve the true lives of real people will be both interesting and educational.[81] Viewers of the William Kennedy Smith trial may have learned that courtroom testimony, demeanor and delivery are crucial to the presentation of a credible case.[82] Brill believes that broadcasts of real trials strip away the public's conception that all trials climax in a "moment of truth," as do fictional courtroom dramas.[83] Furthermore, he notes that the judge, attorneys and jury do not seem to be affected by the presence of television cameras.[84] He asserts that, by bringing trials into homes of viewers via television, a lay audience has the opportunity to watch a "solemn" and "marvelously fair, judicious process."[85]

Finally, while the television media may be properly excluded from highly sensitive court proceedings, such as juvenile trials and domestic relations disputes, it is arguable that the level of freedom granted to television cameras, particularly in federal courts, should continue to be expanded rather than reduced. A case-by-case determination by the judge, where the arguments raised by the parties may be considered but would not be controlling, will sufficiently protect both private and public interests.

Based upon a presumption of television media access to the courtroom under a First Amendment privilege, one commentator noted the standard of strict scrutiny should be applied by courts in determining whether cameras may properly be excluded.[86] Generally, the court would have the responsibility of determining whether "the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest."[87] In *Globe Newspaper Co. v. Superior Court,* the Supreme Court overturned a state statute that mandated exclusion of the press from trials of specified sexual offenses involving victims under the age of eighteen.[88] While the Court made it clear the First Amendment does not absolutely bar the exclusion of cameras in court, it noted the exclusion decision must be made on a case-by-case basis, taking into account the state's interest in protecting "minor victims of sex crimes from further trauma and embarrassment."[89] Although opponents of the case-by-case approach to television access fear defendants will be solely at the mercy of the judge's discretion, the adoption of a strict scrutiny test will provide some measure of certainty in the outcome of the decision.

In addition, procedural safeguards and rules should be established to allow defendants to make an interlocutory appeal of a pre-trial decision to allow cameras in court.[90] The *Chandler* court acknowledged that a post-trial appeal of television access was a poor remedy considering that any harm to the defendant may have already occurred; however, it still upheld Florida's access rule which provided for appeal only after-the-fact.[91] By mandating the application of a strict scrutiny test to television media access on a case-by-case basis and by providing defendants with the right to an interlocutory appeal, the courts will have some parameters by which they may effectively balance the concerns of the parties involved.

Consent of the litigating parties to allow television broadcasts of their trial invokes several problems and therefore should not be adopted as a bar to camera access.[92] It is foreseeable that a unanimous consent requirement would effectively exclude the public entirely from court proceedings, thus interfering with both the public's right to know and the media's presumptive privilege under the First Amendment. However, although the parties themselves should not be given the unilateral power to exclude cameras from the courtroom, it is arguable that witnesses should be given such rights. Presently, fourteen states[93] allow witnesses to ban the televising of their testimony under the justification that witnesses differ from defendants in "the circumstances leading to their attendance in court."[94] The rationale behind allowing the witness exception to televised proceedings is that witnesses may be reluctant to testify or will alter their testimony if exposed to public scrutiny via television.[95] A defendant, on the other hand, may not want his or her trial televised, but as long as there is no due process violation the cameras will be allowed and the defendant must be present. Thus, televising a defendant's testimony will not have the same potentially detrimental effect to the criminal justice process as will the televising of a witness' testimony.[96]

CONCLUSION

Over the last three decades, the United States judicial system has recognized the power of the television media in reaching the public and has slowly allowed television cameras in both federal and state courtrooms. With the increasing acceptance of television cameras in court, however, comes the responsibility of the court system to better guide its trial judges as to when it is appropriate to allow or restrict media access. A strict scrutiny approach on a case-by-case basis will best protect the interests of all parties involved. Access to an interlocutory appeal of the court's decision will serve as an added safeguard for defendants. And, finally, the court should be allowed to restrict television coverage on a limited in-court basis where the privacy concerns of a witness would be infringed.

Generally, it is in the interest of the public, the litigating parties, and the justice system to continue to

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allow television coverage of trials. The public receives an education into the workings of the legal system through real civil suits and criminal trials. The litigating parties have the opportunity to have their story related to the public in their own words, with the public acting as a true jury of their peers. Finally, the justice system receives a check on its actions knowing that the eyes of the public are upon it.

Leslie A. Morse

1. Justice Potter Stewart, *'Or of the Press'*, 26 HASTINGS L.J. 631, 634 (1975).

2. New Jersey v. Hauptmann, 180 A. 809 (N.J. 1935) *cert. denied,* 296 U.S. 649 (1935).

3. *See Cameras in Court,* NAT'L L.J., Dec. 23, 1991 at 12.

4. The Sixth Amendment provides, "[I]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury..." U.S. CONST. Amend. VI (emphasis added).

5. Gregory K. McCall, *Cameras in the Criminal Courtroom: A Sixth Amendment Analysis,* 85 COLUM. L. REV. 1546 (Nov. 1985).

6. *Id.*

7. *See generally,* Deborah Pines, *Cameras in Federal Courts: Less Interest than Expected,* N.Y.L.J., Nov. 7, 1991, at pg. 1. A three-year experiment with cameras in specific federal courts began July 1, 1991. *See* discussion *infra* Part II.

8. Jonathan Alter, *The Media: Old Circus, New Context,* NEWSWEEK, Dec. 16, 1991, at 23.

9. *Id.*

10. MCCALL, *supra* note 5, at 1547.

11. 62 A.B.A. Rep. 1134-35; ABA CANNONS OF JUD. ETHICS,, Canon 35 (1937).

12. *Id.*

13. *Id.*

14. Carolyn Stewart Dyer & Nancy R. Hauserman, *Electronic Coverage of the Courts: Exceptions to Exposure,* 75 GEO. L. J. 1633, 1641 (June 1987). Canon 35 was replaced by Canon 3A(7) in 1972, which was more explicit than its predecessor but similar in scope and intent. The coverage of the Canon remained virtually unchanged for a decade. *Id.* at 1641. In 1982, the ABA revised Canon 3A(7) to provide for electronic media coverage at the discretion of the trial judge under the guidelines of supervisory courts and with the provision that the parties' rights to a fair trial were protected. *Id.* at 1641.

15. *Id.*

16. *Id.* at 1642.

17. Estes v. Texas, 381 U.S. 532 (1965), *reh'g. denied,* 382 U.S. 875 (1965).

18. *Id.* at 535. The Texas trial court decision and the decision of the Texas Court of Appeals in *Estes* are both unreported.

19. *Id.* Estes based his claim on the language of the Fourteenth Amendment that "[no] State [shall] deprive any person of life, liberty or property, without due process of law." U.S. CONST. amend. XIV, § 1.

20. Estes v. Texas, 381 U.S. at 552.

21. The First Amendment provides, "Congress shall make no law...abridging the freedom of speech, or of the press..." U.S. CONST. amend. I.

22. Estes v. Texas, 381 U.S. at 539.

23. *Id.* at 536. *See also* Nancy T. Gardner, *Cameras in the Courtroom: Guidelines for State Criminal Trials,* 84 MICH. L. REV. 475 (1985).

24. Estes v. Texas, 381 U.S. at 545.

25. *Id.* at 547.

26. *Id.* at 548.

27. *Id.* at 549.

28. Dyer, *supra* note 14, at 1642.

29. *Id.* at 1643.

30. Chandler v. Florida, 449 U.S. 560 (1981).

31. Dyer, *supra* note 14, at 1645.

32. Chandler v. Florida, 449 U.S. at 567.

33. *Id.* at 568.

34. Chandler v. Florida, 366 So.2d 64, 69 (Fla. Dist. Ct. App. 1978), *cert. denied,* 376 So. 2d 1157 (Fla. 1979). While the Court of Appeals did not expressly apply the *Estes* test, it found that the defendant was not denied a fair trial or his due process rights by allowing portions of the trial to be televised.

35. Chandler v. Florida, 366 So. 2d 64, 69 (Fla. Dist. Ct. App. 1978).

36. Chandler v. Florida, 449 U.S. at 568.

37. *Id.* at 573-74.

38. *Id.* at 582.

39. *Id.* at 581.

40. *Id.* at 582.

41. Dyer, *supra* note 14, at 1638.

42. *Id.*; ABA CODE OF JUDICIAL CONDUCT; Alabama; Alaska; Arizona; Arkansas; California; Colorado; Connecticut; Delaware; Florida; Georgia; Hawaii; Idaho; Illinois; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Ohio; Oklahoma; Oregon; Pennsylvania; Rhode Island; Tennessee; Texas; Utah; Vermont; Virginia; Washington; West Virginia; Wisconsin; Wyoming.

43. Dyer, *supra* note 14, at 1640.

44. *See* Laralyn M. Sasaki, *Electronic Media Access to Federal Courtrooms: A Judicial Response,* 23 U. MICH. J. L. REF. 769 (1990). Sasaki's article is the result of a 1989 survey of 249 federal judges who responded to a questionnaire about their thoughts on cameras in federal court.

45. *See supra* note 14 and accompanying text.

46. Gardner, *supra* note 23, at 482.

47. Sasaki, *supra* note 44, at 773.

48. *Id.*

49. *See* Judicial Conference Ad Hoc Committee on Cameras in the Courtroom, Policy Statement on the Use of Cameras and Other Recording Means in the Courtroom (September 1990) *quoted in* Sasaki, *supra* note 44, at 780 n.75.

50. Pines, *supra* note 7, at para. 5. A successful result to the experiment could lead to future live coverage of U.S. Supreme Court proceedings.

51. Henry J. Reske, *Ground-Breaking but Boring: Few Cameras Expected in Federal Courts as Broadcast Experiment Gets Underway,* 77 A.B.A.J. Sept. 1991, at 26.

52. Pines, *supra* note 7, at para. 6.

53. *Federal Court Adopts Interim Rule on Cameras,* MASS. LAW WKLY., Sept. 30, 1991, at 17 (quoting Massachusetts Local Rule 83.3.1, § A(2)). The rules governing the federal pilot program have been adopted by all participating courts.

54. *Id.* (citing Mass. Local Rule 83.3.1, §C(3)).

55. *Id.* (citing Mass. Local Rule 83.3.1, §B(2)&(3)).

56. *Id.* (citing Mass. Local Rule 83.3.1, §A(3)).

57. *Id.* (citing Mass. Local Rule 83.3.1, §G).

58. *See generally,* Pines, *supra* note 7.

59. Pines, *supra* note 7, at para. 13.

60. Mass. Local Rule 83.3.1, § B(1); FED. R. CRIM. P. 53. The Federal Rules state, "[t]he taking of photographs in the court room during the process of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court."

61. Pines, *supra* note 7, at para. 15.

62. *Id.* at para. 16 (quoting David Brookstaver, former administrator of the New York Broadcasters Courtroom Pool).

63. Timothy B. Dyk, *Newsgathering, Press Access, and the First Amendment,* 44 STAN. L. REV. 927, 960 (1992).

64. United States v. Torres, 602 F. Supp. 1458 (N.D. Ill. 1985).

65. *Id.* at 1464 (citing U.S. v. Edwards, 672 F. 2d 1289 (7th Cir. 1982)).

66. *Id.* at 1462-63.