

# News Cameras in the Courtroom:

A Free Press-Fair Trial Debate

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Emerson College, Boston

with
Preface by Judge Alfred T. Goodwin
and
Introduction by George Gerbner

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## **PREFACE**

#### Alfred T. Goodwin

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For at least half a century, the idea of news cameras in courtrooms has been a program topic at countless meetings of lawyers, news professionals, and public interest groups. Perhaps, like the law of torts, the law of photography and broadcasting is still developing. This book sheds substantial light on the subject, and better yet, clears away some of the misinformation that abounds.

The traditional position of the bar is forthrightly proclaimed in the words of Federal Rule of Criminal Procedure 53:

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 by the court.

This rule was adopted in 1946. Between 1937 and 1972, Canon 35 of the American Bar Association's standards of judicial conduct provided that all photography and broadcasts in courtrooms should be prohibited. In 1972 the wording was changed, but the substance was not materially altered. See Code of Judicial Conduct 3 A(7). The news media, and the television industry in particular, did not cease to challenge the ABA rule, and in 1978 the conference of State Chief Justices approved a resolution to allow the highest court of each state to promulgate standards and guidelines regulating radio, television, and other photographic coverage of court proceedings (see Part One). By 1981, when the Supreme Court considered, and rejected, a defense proposition that Florida's permissive television coverage of a criminal trial constituted a denial of due process, 19 states were permitting some form of television in their courtrooms. See *Chandler v. Florida*, 449 U.SD. 560, 565 (1981).

Following the Chandler decision, and somewhat emboldened by technical improvements that had reduced the size of cameras and the amount of supplemental x Alfred T. Goodwin

light needed to transmit a picture, the television industry asked the Judicial Conference of the United States to reconsider Rule 53 and its flat denial of television entry into the courtrooms. A committee of judges made an extensive study of the matter in 1983. After viewing sample broadcast techniques and consulting among themselves, the committee recommended against a change. The federal courts, accordingly, remain closed both to television and still photography, to the apparent satisfaction of a majority of the judges, a significant element of the trial bar, and some observers of television news performance when television attempts to cover courts.

Critics of television in the courts note that because of time constraints, "gavel to gavel" coverage is virtually unworkable. They suggest that, except for trials which possess extraordinary voyeuristic appeal, coverage is economicall uninviting. Whatever may be the reasons, it does appear that even in the states where cameras are permitted in the courtrooms, the public sees little of the product on the evening news. More often the viewer sees only a few seconds of a picture of a judge and a witness, or a lawyer, or a scan of a jury box, with a voice-over by an announcer, giving a brief summary of what allegedly happened during the day in court. Some law professionals remain unconvinced that this type of coverage of the courts provides enough public education to balance the perceived institutional costs of allowing the cameras in the courtroom. The costs most commonly mentioned include added administrative burdens on the judge and an extra ingredient of worry to the lawyers. Critics express the fear that selectivity of the few minutes chosen for broadcast will distort or conceal what the jurors saw and heard. This book deals with these and other perceived costs, and points the way toward useful further studies (see Part Three).

One of the concerns noted in various studies of extended television coverage of trials is that jurors may go home at night and see and hear once again the evidence that they saw and heard during the day. This kind of emphasis by repetition and its ad hoc selection, some observers fear, can distort the fact-finding function, or at least introduce into it a wild card that can be controlled only by sequestration. Sequestration is a word that rolls easily off the tongues of the media representatives, but it rings warning bells for judges and jurors.

Experienced judges tend to agree that jurors are almost painfully conscientious about paying attention to the judge's instructions. Jurors try to avoid talking about the case. Jurors try not to commit other errors about which they have been warned. But if jurors are to be routinely sequestered in long and complicated criminal trials (the kind television seems most avid to cover), then the surface has not yet been disturbed in the lengths to which potential jurors will go in order to avoid service. It is bad enough for jurors to give up family vacations and business trips with spouses and to more or less cheerfully pay the other personal costs of long trials, without being shut up in hotel rooms without television. Sequestration also may go hard on future defendants whose colorful lifestyle and even more colorful means of terrorizing

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their victims result in wholesale sequestration orders so that the public may be entertained.

This volume examines the available studies in the whole fascinating area of cameras in court, and finds many of them wanting. The published material relies heavily on opinions and perceptions (see Part Three). There is understandably little hard evidence about what television has done (or will do) either to explain the justice process or to skew it. For example, the book raises the intriguing question of whether televised trials might result in longer sentences than would follow untelevised trials (see Part Four). No one really knows.

Another imponderable is the effect upon race relations in urban television markets where the number of defendants of one race may appear to be disproportionate to their number in the viewing community. No one really knows.

The manipulation of television outside the courtroom has recently been devleoped into a subspecialty of the public relations industry. Some lawyers have become celebrities as the result of their daily press conferences on the courthouse steps during protracted criminal trials from which cameras were excluded. The 1985 DeLorean case in Los Angeles provides a notorious example. A useful field of inquiry might include some study of the role of counsel in utilizing the media in aid of their clients, whether the client is the prosecutor or the prosecuted. Some judges say that the full utilization of First Amendment privileges is a duty owed by the lawyer to the client. English judges, and some American judges, still think the courtroom is the proper place to bring out the evidence.

## INTRODUCTION: TELEVISED TRIALS—HISTORIC JUNCTURE FOR OUR COURTS?

#### George Gerbner

When state courts admit cameras into the courtroom, they set out on a road whose course and destination no one really knows or can foresee. Some think it leads to enlightenment and needed reform. Others fear that it represents an historic turning point, making the administration of justice dependent on entertainment values and media power in ways that are very different from the constitutionally protected functions of journalistic reporting.

Until now, there has been no handbook of well-organized intelligence on the subject, no road map to sort out the opportunities and hazards ahead. This book is such a road map; it helps chart a journey that has already begun but has not yet been fully understood or assessed. Those alert to the twists and turns and crossroads that will mark that journey will be equipped to take advantage of its opportunities and avoid its hazards. My purpose in this introduction is to highlight the historic significance of these choices and to sketch some of the issues and choice points—many also expertly handled in later chapters of this book—from the perspective of our own research on the subject.

### HISTORIC JUNCTURE

Proponents claim that television coverage is desirable because conveying real courtroom procedure to millions of homes will enhance public understanding and reduce misconceptions about the administration of justice without necessarily interfering with what goes on within the courtroom. They contend that the addition of cameras enriches conventional reporting. They point to intense public interest in

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certain trials, to dissatisfaction with courts, and to the need for exposure and reform as added reason for admitting cameras into the courtroom (see Parts Two and Four).

Opponents agree that new cameras and unobtrusive equipment need not overtly interfere with the conduct of trials. But they argue that transporting the sights and sounds of courtroom behavior into a pulbic arena is a qualitative change and not merely journalistic enrichment. They question whether televising selected trials of great audience appeal improves responsible reporting, enhances public understanding, or hastens needed court reform. They are concerned that the audio-visual element may only enhance dramatic appeal, override journalistic considerations, contribute to the pressures for popular rather than fair and dispassionate courtroom behavior, inhibit rather than assist the exposure of less visible needs and problems, and, in general, transform television reporting into a dramatic spectacle (see Parts Two and Four).

Although most state courts have admitted cameras on a temporary or permanent basis, the Judicial Conference of the federal courts has rejected a media petition to do so. Furthermore, after an initial period of experience, and the systematic assessment of long-range consequences, state courts may wish to review their stand. This book will help provide the basis for making that judgment.

What are my reasons for believing that the issue of television cameras in the courtroom (and especially in ongoing criminal trials) is one of historic significance? Let me start with the question of the public image of the courts and then go on to discuss the dynamics of television as the context in which the issue has to be seen.

The public's expectations of and assumptions about the legal system define the political climate in which judicial policies are developed and applied. A study on "The Public Image of Courts" conducted by Yankelovich, Skelley and White, Inc., for the National Center for State Courts, found that most people cite formal education and the media as their primary sources of information about courts. Direct experience with courts (whether as juror, witness, spectator, or defendent, and so on) is claimed by relatively few people. This study reveals that courts are the least known and understood branch of government. For example: 37 percent of the public believe that a person accused of a crime must prove his/her innocence; 30 percent believe that a district attorney's job is to defend criminals who are unable to afford a lawyer; and 72 percent believe that the U.S. Supreme Court can review and reverse any state court decision (see Part Four). Clearly, there is a need for better communication about the courts.

However, before we conclude that televised trials can best address that need, we should consider the nature of television and its dynamics.

#### THE DYNAMICS OF TELEVISION

Television is our nation's most common and constant learning environment, the mainstream of our culture. In the typical American home, the set is on for more than

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7 hours each day, engaging its audience in a ritual most people perform with great regularity.

Though television is only one source of citizens' knowledge about courts and law, it may well be the single most common and pervasive source of *shared* information and imagery. Our own reserach at the University of Pennsylvania's Annenberg School of Communications has found that typical viewers of prime time dramatic network programs will see 43 law enforcers, 6 lawyers, and 3 judges every week—all ficitonal but realistically portrayed. They nearly all work on criminal cases, mostly murder, and succeed in bringing the criminal to justice. The legal process is practically invisible on crime programs and largely mythical on courtroom drama. Viewers rarely see arraignments, indictments, pre-trial hearings, plea-bargaining, jury selection, or jury deliberations. While crime programs generally support the idea of compliance and the ideology of law, there is also the message that illegal activities by the police (constitutional violations and police brutality) are justified.

Our research has found that the amount of time people spend with television makes an independent contribution to their conceptions of social reality. When other factors, such as education and socioeconomic status, are held constant, heavy viewers of television hold beliefs and assumptions that parallel television portrayals more closely than do those of light viewers. Viewing tends to cultivate beliefs that have serious implications for the administration of justice in general and defendents' rights to a fair trial in particular. These beliefs include relatively high levels of apprehension and mistrust (what we call the "mean world" syndrome) and a relatively "hard line" approach to personal rights.

The vastly inflated incidence of violence and crime coupled with the clean, swift, and unerring justice of the television world already build expectations that may contribute to frustration and impatience with the courts. Would cameras in the courtroom alleviate or amplify that trend (see Part Four)? Studies conducted so far indicate that those who rely on what television presents are more likely than others to blame the court system for crime and to approve harsher punishment, warrantless searches, use of illegally obtained evidence, and other violations of due process. These influences may have contributed to the Roper Poll findings (Report 81-3 and 82-3) that the proportion of those who believe that the courts have been "too easy" on criminals increased from 52 percent in 1967 to 83 percent in 1981, and that "permissiveness in the courts" was named as the leading "major cause of the country's problems" (by 53 percent in 1982 compared to 39 percent in 1973).

These trends take on added significance when we contemplate the appeal of "real life" trials using courtrooms as program origination locations, selected and edited to the specifications of already existing programming of proven audience and ratings drawing power. The stakes become very high indeed. How can (and why should) broadcasters resist the pressures of the marketplace and the rewards of higher ratings? These are some of the questions readers of this book will want to pose, and questions this book will help them consider.

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#### POLICY ISSUES

A broad range of policy issues has also been raised in discussions of the impact of television technology on courtroom procedures and judicial processes, all fully explored in this volume. One early argument against broadcast coverage was that television equipment is bulky, distracting, and cumbersome. But today, the advances in broadcast technology are such that the required equipment can be light, compact, and unobtrusive (see Part Two).

A related concern of critics is that knowledge that a trial is being televised may be psychologically distracting to witnesses, jurors, attorneys, or even the presiding trial judge. The Supreme Court in Chandler reviewed the existing evidence and concluded that there was as yet not enough support for claims of psychological distraction due solely to television. The broader issue the Court did not address is that "psychological distraction" need not be confined to the courtroom. The knowledge that "the whole world is watching," including one's neighbors, peers, constituents, friends, and enemies may be sufficient "distraction" to overwhelm primary concern with what goes on in the courtoom (see Part Two). Judges and prosecutors are often elected (and may aspire to other offices), and defense attorneys may utilize the exposure to enhance their private practice. In short, television trials will offer courtroom participants a powerful medium for exposure and possible gain—or loss. How do jurors, witnesses, and all other participants adjust to their new roles as players in a real-life courtroom drama piped into millions of homes for viewers brought up on Perry Mason, anxious for morally satisfying instant solutions and fed up with what appear to be legal quibbling, obstruction, and delay?

At the next level of concern is the possibility that extensive television coverage may damage a defendant's ability to obtain a fair trial. Of course, this is potentially true of any form of publicity, whether printed or broadcast, and whether emanating from within the courtroom or outside of it. The critical issue is not the just *amount* of courtroom coverage, but whether television from within the courtroom might be qualitatively as well as quantitatively different from television coverage without cameras in the courtroom (see Parts Two and Three). Reporting can synthesize, summarize, go behind the scenes to the essence of things. Cameras record opaque appearances, arguably the least illuminating and potentially most prejudicial aspects of a trial, and, given time limitations, possibly at the expense of balanced analysis. Will we make defendents guinea pigs in an uncontrolled experiment, and at what cost to justice and future litigation?

Next we come to the issue of broadcaster performance. Do news directors and network programmers select and edit trials and scenes from trials with legal principles or audience appeal in mind? Have the sensational trials that have been televised resulted in fairer verdicts and better understanding of due process, besides the undeniable notoriety of the participants?

Finally, we reach the broadest level of concern. Beyond the pressures, oppor-

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#### PART ONE

# BACKGROUND TO THE COURTROOM CAMERAS DEBATE

The question of whether news cameras should be allowed in courtrooms has been a controversial issue for nearly 70 years. As early as 1917, the Illinois Supreme Court advised state courts not to allow still or newsreel photography of trials in its opinion in *People v. Munday*. Taking the issue a step further, in 1925, at the request of the Chicago Bar Association, 45 judges voted unanimously to ban cameras from inside and from the vicinity of courtrooms (Kielbowicz, 1979, p. 15). This decision, however, did not disturb Judge John T. Raulston, who presided at the Scopes "Monkey" trial in Dayton, Tennessee, that same year. Judge Raulston not only permitted camera coverage of the trial, but welcomed radio coverage as well.<sup>2</sup>

The trial of John T. Scopes, a Kentucky school teacher, began on July 10, 1925, and lasted nine days. The case was a challenge to the Butler Act, a Tennessee statute which prohibited the teaching of any evolution theory that denied the Biblical version of the Divine Creation. The penalty for the offense was a fine of \$100 to \$500. According to James Wesolowski (1975, p. 76), the Butler Act may never have been challenged were it not for the avaricious ideas of a group of Dayton businessmen and civic leaders:

It was agreed among them that a courtcase testing the Butler Act would provide a number of benefits. Motivations varied, but the test case was planned at least partly as a type of public relations gimmick, which would tend to bring business to the small town and, in effect, put Dayton on the map.

Along with, or even in spite of, the maneuverings of publicity hungry businessmen and civic dignitaries, the case was bound to attract public and press interest once it was announced that the trial attorneys would be William Jennings Bryan, three-time Democratic presidential nominee, for the prosecution, and Clarence Darrow, a well-known Chicago lawyer, for the defense. Newspaper reporters and photographers were present inside and outside the courtroom, and several photographs were taken during the proceedings, including one of Clarence Darrow addressing the court on July 10, 1925; another of John Scopes standing before the judge as he was