CAMERAS IN THE COURTROOM:
TIME FOR A REHEARING

A CREATIVE PROJECT

SUBMITTED TO THE UNIVERSITY HONORS PROGRAM

AS A SENIOR HONORS PROJECT

by CONNIE J. KING

ADVISORS- DR. LARRY HORNEY

MR. JOSEPH COSTA

BALL STATE UNIVERSITY

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PREFACE

Cameras-in-the-courtroom has been a controversial and timely topic for over forty years. As a result of the Bruno Hauptman trial, 1935, the American Bar Association decided through Canon 35 to completely ban camera coverage of courts.

The media's attitude is that a complete ban is unfair censoring of the free press established in the First Constitutional Amendment. Many have fought Canon 35, supporting their criticism with proof of successful courtroom coverage and facts of newer technology which even more allow cameras to be unobtrusive. In the media's opinion, the Bar is putting unfair restrictions on cameras while allowing writers to report uncensored.

As a photojournalist, I believe camera courtroom coverage should be allowed under restrictions which ensure the litigant a fair trial. Experiments in states such as Colorado, Alabama and Florida prove that with cooperation between judges and the media, restrictions which allow for both the first and sixth amendments can be drafted.

Two lawyers from New York write in an article for Judicature (October 1977) that "when the American public can see and hear the facts, it generally arrives at the correct decision." It is my hope that through my paper, more of the public will become aware of the seriousness of the controversy.

I do not pretend to have covered the subject in its entirety. I have gathered much material that I have not included

and I have not contacted every source on the subject. But I have tried to collect from both sides of the question and to present the sides so the reader can make the decision.

I have come to my conclusion, but I admit that points on the judicial side have some validity. In order to ensure a fair trial to all, the media must accept some restrictions. In states which allow camera coverage, these restrictions have been worked out to protect both the free press and a fair trial.

I hope that my presentation will lead others to research the subject by their own methods. I believe that this is not a subject that should be let to die. The public has a right to know what happens in its courtrooms. As it is impossible for everyone to observe a single trial, the media should be allowed as a responsible interpreter.

"In our complex society which fragments our time and limits our ability to observe in depth jobs and professions other than our own, the press (and broadcasters) is more than ever the interpreter to the people of their public institutions," write the two New York lawyers. More and more, those in the law profession see that camera courtroom coverage will benefit society rather than hinder the court's procedures.

My sources have been attributed within this piece although a complete bibliography is not included.

I have written this piece as a magazine article which will be submitted for publication. The softer, slower lead was written to fit magazine style. I fear that a thesis written on the subject would sit on a shelf, reaching only a limited audience.

As a published article, my statement can reach a much greater portion of the public.

As a secondary reason in writing this for magazine publication, I hope my writing skills have sharpened to serve the media. Although thesis-writing is a valuable skill, skills in journalistic magazine writing will be more valuable and marketable to me in my professional future.

I have learned through researching the cameras-in-the-courtroom controversy that objections to such are deeply rooted. Patient media persons must continue to work responsibly to prove their point. Every step forward is an achievement. The media in states allowing coverage must watch their every step to avoid another step backward.

I think that gradually the courts will accept the media's evidence for cameras and will begin to cooperate for responsible coverage.

In conclusion, I wish to thank my advisors on this project.

Dr. Horney has patiently worked with me on my writing style and helped me through several revisions. His guidance has improved the mechanics of this piece and taught me the basics of magazine writing.

Many thanks go also to Mr. Costa who, as an eyewitness to many of the events and an active campaigner for the media's rights, has supplied and corrected facts and given them perspective. He has encouraged me through revisions while pushing me to write as encompassing an article as possible in these few pages. Without their help the following would not be possible.

Credit is due also to the Ball State University Honors Program to which this project is submitted. The program, under the direction of Dr. C. Warren VanderHill has provided me with exceptional classroom experiences that were not available under the regular University program. From my first day of class in ID 199 to the final word of this article, I have enjoyed and valued my participation in the Honors Program.

The murmur hushes as a robed choir processes into the sanctuary singing "The Church's One Foundation." Opening their hymnals, the congregation rises and joins voice with the choir. Music swells through the room and echoes back from sun-touched stained glass to a large rugged wooden cross hanging above.

The minister, dressed conservatively in a dark suit, leads his younger bearded assistant to their place in front of the cross as they join the singing.

The music fades and sanctuary lights dim as the minister steps forward to read the scripture. Following the reading, all heads bow in silent unison for the opening prayer, then voices join reverently in The Lord's Prayer.

A television camera silently scans the faces of the congregation and the choir, then slowly comes to focus on the minister, shifting then to frame the large wooden cross.

Electronic reproduction catches the scene and transmits it to worshippers at home. A pleased producer watches the projection on his studio monitor, happy with the smoothness of the production after all the time spent on arrangements.

The electronic medium observes the church without altering its order. So it is with preserving a courtroom's dignity and tradition through silent, unobserved broadcasting equipment.

As with the church service, the station had spent several hours making arrangements for media coverage of the local courtroom. The state's judiciary had recently ruled to allow

cameras in their courtrooms on a case-to-case basis, hinged on the judge's acceptance of the media's technical make-up.

The judge and the producer, realizing the importance of preserving both the media's free press rights and the defendant's rights to a fair trial, had considered the technical requirements of the broadcast equipment, the administrative needs of the courthouse and the privacy rights of the defendant and witnesses. Permission had been obtained from all parties involved and cameras and microphones were kept to a minimum, placing them out of sight in the courtroom's balcony.

More and more, state's are allowing the media to cover trials by still cameras, video-tape and broadcasting. The judiciary has been concerned since the Hauptman trial, 1935, that cameras in a courtroom are not compatible with a fair, impartial trial, But evidence through the years backs the media's claim that cameras and broadcasting need not interfere with the dignity or fairness of the courtroom.

Alabama's judiciary, in deciding whether to accept courtroom coverage in their state, had no doubt that flashbulbs, television lights, cables,and cameramen running loose would impair justice, as it did at Billy Sol Estes' pretrial (1962).

However, according to Howell Heflin, former chief justice of Alabama, the media pointed out that photographing and broadcasting of a church service "does not distract any church participant or degrade the solemnity of the service if sophisticated and advanced technology is employed: noiseless long range cameras, overhead lighting, still photography without

flashbulbs and other modern equipment."

Alabama courts decided to allow broadcasting and in 1977, over a year after their plan began, Heflin told the National Broadcast Editorial Association they had had no problems. "Electronic journalists have proven that they can be responsible and fair."

Truly, journalists have not always been so responsible. During Bruno Hauptman's trial for the kidnapping of Charles Lindberg's baby daughter, photographers and reporters hustled for the story with little regard for the rights of others. According to eyewitness and former New York Daily News photographer Joseph Costa, cameras were banned from the courtroom, but the confusion outside led to the myth that the trial itself was a travesty, surrounded by the atmosphere of a Roman holiday.

Margie Kelly writes in the Freedom of Information Digest (January/February 1979), "If photographers 'clambered on counsel's tables and shoved their flashbulbs into the faces of witnesses,' as several sources have noted, the 1935 New York Times' articles made no mention of it. Instead, the Times' stories repeatedly noted the 'deep silence' in the courtroom."

The actions of the media as well as others in the court's audience were considered irresponsible. Media persons were sent to get the story and, because of the ban of pictures inside the courtroom, they did what they could to cover the trial from the outside. The myth of a circus-like atmosphere in court and

the amount of publicity as well as the sensational aspect of the trial, Lindberg being such a contemporary world hero, led to Canon 35 (now Canon 3-A-7), a complete ban of cameras in courtrooms, adopted by the American Bar Association (ABA) on September 30, 1937.

The canon states, "Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be allowed."

Broadcasters and photographers have fought the reputation and ruling since 1937 and in some states have won the right to cover trials. Colorado has allowed television coverage since 1956 and Colorado's Chief Justice Pringle says it has caused no problems.

But broadcasters did cause problems during pretrial hearings of Billy Sol Estes' case in the Texas Court of Criminal Appeals. Texas found Estes guilty of swindling, but the United States Supreme Court overturned the decision based on the fact that the pretrial was broadcast over Estes' objection, while broadcasters destroyed the dignity of the courtroom.

"Cables and wires were snaked across the courtroom floor, three microphones were on the judge's bench and others were beamed at the jury box and the counsel table. It is conceded

that the activities of the television crews and news photographers led to considerable disruption of the hearings."

The Texas judge set no guidelines for the press and because he allowed total unrestricted coverage, the pre-trial hearings got out of hand. As the trial proceeded and participants raised objections, the judge put restrictions on broadcasting. But the harm had been done.

An important factor in the Estes' case, as with other cases when cameras were accused of helping to disrupt justice, was that the press had the full cooperation of law enforcement officers and the courts. "The remedy for official misbehavior is control of officials, not the press," write Jack Weinstein, U.S. District Court Judge, eastern New York, and Diane Zimmerman, law professor at New York University.

Television was a younger media at the time of Estes' hearings. Advances in broadcast and camera technology and a growing awareness of responsibility in the media make today's situation different. In light of this, the two New York lawyers believe "the arguments against the experiment (of allowing cameras in courtrooms) look increasingly flimsy. . . Perhaps the Court's suspicions about the motives and effects of television coverage were justifiable then. But television has grown up." They say that their courts have not seen disruptive effects or persons playing to the camera in video-taping of their courts. "The camera turned out to be so unobtrusive that everyone in the court ignored it."

Some states still refuse to accept this evidence. Indiana's Chief Justice Givan complains that media only covers sensational trials and has damaged several cases in Indiana. In these cases the media "isn't dispensing news, it's a commercial venture."

At the ABA's mid-year national meeting in Atlanta last February, the Bar rejected a special committee's recommendation that "coverage may be allowed at the discretion of the highest court in each state or federal jurisdiction." Givan calls the rejection "pretty substantial evidence against cameras."

He explains that the rejection is a decision from lawyers, not judges. Judges would not be hurt by the coverage; they would get free publicity. But that is not the question. "The judge has a duty above his ego to guarantee a fair trial."

Canon 35 is not officially law, but the judiciary considers the ruling binding. Therein lies part of the problem. An editor or photographer figures he has a constitutional right to freely cover the trial because no law tells him otherwise. But the judge feels his duty is to prevent it; there is a law for him.

The U.S. Supreme Court's 1965 Estes decision states that "television in its present state and by its very nature, reaches into a variety of areas in which it may cause prejudice." In a separate but concurring statement, Justice Harlan comments, however, that if the "day may come when television will have become so commonplace an affair in the daily life of the average person" then "the constitutional judgement called for now would of course be subject to re-examination in accordance with the traditional workings of the Due Process Clause."

In light of advances in technology and proven cases of successful, responsible camera coverage, now is the time to "parole" the media and grant a rehearing. Because of unprofessional actions by the media during Estes' pretrial, a reversal was in order, but not a complete banning of cameras.

In March, Congress began allowing television coverage of its proceedings. The actions of the executive branch are widely publicized. The media was allowed coverage of the Senate's Watergate hearings. The new Freedom of Information act has increased Americans' access to government records about their lives and associations. And the Open Meetings Law restricts the calling of private executive sessions without prior warning to the public and the press.

A trial is a public event and what happens in a courtroom is public property. Those present can report the happenings without fear of punishment. "There is no special pre-requisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to supress, edit, or censor events which transpire before it." So the U.S. Supreme Court decided in Craig v. Hamey, 1946.

In the earlier days, during important trials and hearings, courtroom windows and doors were thrown wide open, so that 'country folk' could crowd in for ten miles to hear. . . 'the great lawyers' plead. Today, unfortunately, the courts are more often typified by barriers," write the New York lawyers.

Weinstein and Zimmerman continue saying, "No change could better penetrate the 'inner sanctum' illusion which surrounds

the bench than a more enlightened relationship between the courts and the press."

The press and broadcasters have been trying to rebuild a relationship of respect with the law profession. National Press Photographers Association (NPPA) has been struggling against Canon 35 since the association was founded in 1946. Joseph Costa, president of NPPA from 1946 to 1948, and editor of the National Press Photographers Magazine until 1966, worked against the camera ban partly through his articles for the magazine. The publication regularly ran a column during the campaign, "Doing Honor To His Honor," which reported citations presented to judges who allowed camera coverage in spite of the judicial's strong stand against it.

In the early 1960's, Costa spoke before the ABA House of Delegates, presenting evidence from courtrooms with responsible camera coverage. The president of the Colorado Bar Association supported Costa and told how smoothly cameras covered trials in his state. Costa cited a case in Waco, Texas, in which a judge permitted an entire trial to be covered live. The camera was positioned in the balcony and the arrangements "worked beautifully." The judge, the defense council, witnesses and the defendant all issued statements for cameras in the courtroom.

Regardless of the evidence for cameras, the ABA rejected the media's recommendation to relax the canon. And again, early this year, after their special committee's call for allowing cameras, the bar voted to refuse camera coverage.

Journalism and broadcasting educators and professionals continue working to convince the courts. Eight states permit permanent coverage including Alabama, Colorado, Georgia, Florida, New Hampshire, Vermont, Washington and even Texas, site of the Estes pretrial hearings. Thirteen states are conducting experiments with camera coverage and seven more are actively considering coverage.

The medium itself is the media's strongest resource for fighting the ban. The more publicity the camera controversy receives, the better informed and able to judge the public will be. That public includes lawyers and the judiciary.

Certain restrictions are in order when arranging for camera coverage. A conference between the media person and the judge is essential in determining location of cameras, wiring and transmitting devices, movement area of cameramen and pooling arrangements. In large part, the Supreme Court's sympathy for Estes stemmed from the fact that his trial was broadcast without his consent. The Florida Supreme Court's decision to allow camera coverage no longer requires consent of participants; it goes so far as to allow for media appeal on the judge's restrictions.

Both the NPPA and the National Association of Broadcasters have drafted rules of conduct for covering the courtroom. Both associations realize the importance of the judge's cooperation and support and the need to arrange coverage case by case. Arrangements must recognize the rights of the litigant to a fair trial equally with the media's right to free uncensored press.

Many of the judiciary are sympathetic to the media's case. An Indiana Circuit Court judge said he must prohibit cameras because of the state's ruling against it and failing to comply could cause him to be dismissed. He is concerned that cameras, as with any other media coverage, can report only part of the procedures. "Trials won't get any shorter so the possibility will always remain of getting parts out of context." But he would probably allow cameras if it were not for the canon against it.

Both the judge and Floyd Abrams of the National Freedom of Information Committee think the ABA decision against cameras is partly generational. The judge said perhaps younger lawyers are open-minded on cameras in the courtroom because they take the question case by case and are "willing to try something innovative, within certain guidelines."

Members of the media and judiciary have proven they can agree on guidelines for cameras that will not disturb the dignity and sanctity of the courtroom. The media must continue to prove they can be responsible and a positive part of educating and informing the public.

According to Florida Supreme Court's decision, claiming that television coverage will distract jurors from the evidence being presented is "assuming jurors can't abide by their solemn oath or directions from the court" and "to indulge in this assumption would be to impeach the foundation of our system of justice."

A survey taken recently in Florida of participants in camera-covered trials found that respondents felt the presence of electronic media "disrupted the trial either not at all or only slightly," that their awareness of the presence of the media "averaged between slightly and moderately," that the attorney and the juror's ability to concentrate on and judge whether witnesses were telling the truth was "affected not at all," that respondents felt slightly self-conscious by the presence of the media, but also felt slightly more responsible for their actions.

"There is no field of governmental activity about which the people are so poorly informed as the judicial branch. It is highly inconsistent to complain of ignorance and apathy of the people concerning the judiciary, then to close the windows of information through which they might observe and learn," said Alabama's former Chief Justice Heflin in the October 1977 issue of Judicature.

He continues, "It is time for all the judicial systems to grant a rehearing on this the fair trial-free press issue. Jurists must shake the wig powder from their robes and realize that in the latter part of the twentieth century advanced technology can be used to report the proceedings of a judicial hearing by photographs, radio and television in a manner which will not interfere with a fair and impartial trial."