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A CAMERA IN THE COURTROOM

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"Congress shall make no law... abridging the freedom of... the press; ..."[1]

The Supreme Court of the United States has long since ruled that this guarantee likewise is implicit in the due process clause of the fourteenth amendment, and that the states are enjoined from action which would unduly violate freedom of the press.[2]

Wholly apart from the federal Constitution, the states provide similar guarantees. Thus the Virginia Bill of Rights provides: "That the Freedom of the Press is one of the great Bulwarks of Liberty, and can never be restrained but by despotic Governments."[3]

In our democratic form of government there are many forums, most of which are always public. Among these are our courtrooms where the public can see how justice is administered and whether it is administered fairly and impartially by the judge and other public officials. It is said in *Craig v. Harney*:[4]

> "A trial is a public event. What transpires in the court room is public property.... Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it."

The foregoing concepts have given rise in the last several decades to an insistent request, a demand in some quarters, that newsmen be

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[1]U.S. Const. amend. 1.

[2]Cantwell v. Connecticut, 310 U.S. 296 (1940).

[3]Va. Const., Bill of Rights § 12.

[4]331 U.S. 367, 374 (1947).

permitted to photograph the proceedings in the courtroom, and that televising of such proceedings be permitted. This gives rise, therefore, to the question: To what extent, if at all, may courtroom proceedings be the subject of the camera, including the televising of trials?

In view of the holdings that "expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments,"[5] and that "the First Amendment draws no distinction between the various methods of communicating ideas,"[6] there remains no doubt that the protection of freedom of speech and the press is extended to the medium of television, therefore, much, if not all, of what is said in the decisions about cameras and motion pictures would appear to be equally applicable to television.

As a result of the resentment properly felt over the circus-like atmosphere which surrounded the trial of Bruno Hauptmann for the kidnapping of the Lindbergh baby, with the spectacle of photographers leaping about like acrobats, while flash bulbs exploded, Kleig lights glared, and witnesses tripped over electric wires and broadcasting equipment, the American Bar Association, on September 30, 1937, adopted Canon 35 of the Canon of Professional and Judicial Ethics. The Canon, with amendments indicated, is as follows:

> "The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting [or televising][7] of courtroom proceedings, [are calculated to][8] detract from the essential dignity of the proceedings, distract the witness in giving his testimony, [degrade the court][9] and create misconceptions with respect thereto in the mind of the public and should not be permitted."

It is a matter of open controversy whether the Canon can be justified today, or if it can, whether the reasons stated in the Canon are accurate.

I. Dignity of Judicial Proceedings

One of the reasons given in the Canon is that "broadcasting or televising of courtroom proceedings detract from the essential dignity of the proceedings."

A decade or more ago there were many valid practical objections to the televising of courtroom proceedings. These might be called

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[5]Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502 (1952).
[6]Superior Films, Inc. v. Department of Education, 346 U.S. 587, 589 (1954).
[7]Added in 1952.
[8]Deleted in 1963.
[9]Deleted in 1963.

physical objections, such as the noise associated with the clicking of cameras, intensive floodlights, commotion associated with the moving of apparatus, etc. These are no longer valid objections. Remarkable technological advancements have been made in the audio-visual media. Cameras are no longer unwieldly and they are practically noiseless. High-speed lens enable the making of excellent shots under ordinary lighting conditions. Telescopic lens enable the making of closeup pictures from a distance. Microphones are so small and sensitive that they may be completely hidden. The whole apparatus can be enclosed in a booth, outside the walls of the courtroom, with only the nose of the camera projecting through a small hole in the wall.

In *Lyles v. State*,[10] the defendant, who had been convicted of burglary, sought to have his conviction reversed on the ground that the trial court had permitted the use of television cameras in the courtroom. No actual prejudice to the defendant was shown, but he relied heavily upon a violation of Canon 35. The Supreme Court of Oklahoma affirmed the conviction, and in doing so discussed the matter at length, saying in part:

> "But, where court proceedings may be taken for reproduction on sound track and film without disruption or in a manner not degrading to the court, and without infringement upon any fundamental right of the accused, why should not such agencies, within the reasonable rules prescribed by the courts, be permitted to do so?
> ".... On numerous occasions, supervised televising in this Court has been conducted. Our experience is that when properly supervised by the court, there is neither disturbance, distraction, nor lack of dignity or decorum."[11]

Of more than passing significance is the situation existing in Colorado. In December 1955, the Supreme Court of that state designated one of its justices as a referee to hold hearings on Canon 35. Six days were devoted to the hearings; many witnesses were heard; hundreds of exhibits were introduced; cameras were demonstrated and were used without the referee or spectators being aware of their operation. As a result of a favorable report by the referee, Justice O. Otto Moore,[12] the following was adopted as Canon 35 for the State of Colorado:

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[10]330 P.2d 734 (Okla. Crim. 1958).
[11]330 P.2d at 741-42.
[12]In re Hearings Concerning Canon 35 of the Canon of Judicial Ethics, 296 P.2d 465, 472 (1956).

> "Proceedings in court should be conducted with fitting dignity and decorum.
>
> "Until further order of this Court, if a trial judge in any court shall believe from the particular circumstances of a given case, or any portion thereof, that the taking of photographs in the courtroom, or the broadcasting by radio or television of court proceedings would detract from the dignity thereof, distract the witness in giving his testimony, degrade the court, or otherwise materially interfere with the achievement of a fair trial, it should not be permitted; provided, however, that no witness or juror in attendance under subpoena or order of court shall be photographed or have his testimony broadcast over his expressed objection; and provided further that under no circumstances shall any court proceeding be photographed or broadcast by any person without first having obtained permission from the trial judge to do so, and then only under such regulations as shall be prescribed by him."

Thus, in Colorado, the whole matter is left to the trial judge as to whether courtroom proceedings shall be televised. This is also true in Texas, and possibly a few other states.

In so far as it may be claimed that televising courtroom proceedings would interfere *physically* with the dignity of the court, it would appear that any such claim cannot be supported today.

As a matter of fact it is not the *dignity* of courtroom proceedings that is involved. The duty of the judge is not so much to maintain dignity as it is to maintain decorum and orderly procedure in order that the truth may be established. Some of the means used to establish the truth may be quite undignified.

In certain cases witnesses are compelled to use vulgar and obscene language in describing scenes witnessed or conversations overheard.

On occasion it is necessary to permit the lawyer to become quite undignified in his questioning of a witness who apparently is attempting to evade a truthful answer upon cross-examination. The test in such a situation is not the dignity of the lawyer but whether he is debasing, degrading or intimidating the witness.

Some lawyers have a tendency to yell at the top of their voices during certain phases of their closing arguments to the jury, if they think that maneuver effective. It may be undignified, but they are entitled to do it.

So, it is not dignity that we seek to maintain in the courtroom, but decorum and orderly procedure; an atmosphere free from distractions with only one thing going on at a time before the court and jury.

In this connection it must be observed that there is always a danger

that some prosecuting attorneys and judges, particularly in those states in which the judges are elected by popular vote of the people, will think of themselves as actors and play to the galleries. But if the television camera otherwise has a right to be in the courtroom, it ought not be denied just because a few officials make fools out of themselves before a larger audience than otherwise would be the case.

An equally serious danger is that some lawyers, prone to latch onto any proper media for advertising their professional capabilities, would make a play for more clients by carefully staged performances.

It is regrettable that we are faced on occasion with the courtroom histrionics of a few lawyers and judges that are primarily designed to entertain and amuse, or are calculated to advance their personal ambitions. But as someone has said, it is not good housekeeping to sweep one's trash under the carpet, or pull down the blinds so that it cannot be seen from the outside.

II. The Legal Contentions Involved

The two main legal contentions made by the news media in support of their movement for permission to televise courtroom proceedings are: (A) Right of Public Trial, and (B) Freedom of the Press.

A. *Right of Public Trial*

One of the leading cases representing the concept of the public trial is that of *In re Oliver*[13] which involved the Michigan judge-grand jury. It is provided by the statute of that state that the judge may sit as a one-man grand jury and may punish anyone for contempt who fails to answer questions. A judge did this in the above case, in the secrecy of his chambers. The Supreme Court of the United States, in reversing the contempt citation, said:

> "This nation's accepted practice of guaranteeing a public trial to an accused has its roots in our English common-law heritage....
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> "The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the *lettre de cachet* [by which Louis XV is said to have prosecuted 150,000 crimes of opinion].... The knowledge that every criminal trial is subject to contemporaneous review in the forum of

[13] 333 U.S. 257 (1947).

public opinion is an effective restraint on possible abuse of judicial power."[14]

Using this traditional concept that the defendant in a criminal trial or contempt citation is entitled to a public trial, the opponents of Canon 35 graft thereon a correlative right of the public also.

An extreme illustration of this viewpoint is found in the case of *E. E. Scripps Co. v. Fulton,*[15] in which a newspaper procured a writ of prohibition against a judge to prevent him from excluding the public, including the newspaper, from a trial against a defendant charged with pandering. The defendant had moved the court to exclude the public on the ground that he could better compel the witnesses for the state to tell the truth if the public were excluded. The court said:

> "The community is deeply interested in the right to observe the administration of justice and the presence of its members at a public trial is as basic as that of a defendant whether such right be provided for in the constitution or otherwise."[16]

The majority view is to the contrary, and is represented by the case of *United Press Ass'ns. v. Valente,*[17] in which a photographer sought to enjoin a judge from enforcing an order excluding the public from the courtroom. The injunction was denied, the court saying:

> "It is for the defendant alone to determine whether, and to what extent, he shall avail himself of [the right to a public trial]. To permit outsiders to interfere with the defendant's own conduct of his defense would not only upset the orderly workings of the judicial process, but could well redound to the defendant's exceeding prejudice.
>
> "The public's interest is adequately safeguarded as long as the accused himself is given the opportunity to assert on his own behalf, in an available judicial forum, his right to a trial that is fair and public."[18]

But still another reason advanced by opponents of Canon 35 is illustrated by what was said in *Lyles v. State,* in which the Supreme Court of Oklahoma refused to reverse the conviction of a defendant for murder just because the courtroom proceedings had been televised:

> "It has been said without education the people perish. There is no field of government about which the people know so little as they do about the courts. Those institutions of justice

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[14]333 U.S. at 266, 268-70.
[15]100 Ohio App. 157, 125 N.E.2d 896 (1955).
[16]125 N.E.2d at 899.
[17]308 N.Y. 71, 123 N.E.2d 777 (1954).
[18]123 N.E.2d at 780-81.

> engaged in construing constitutional rights and interpreting legislative acts which will determine our enjoyment of life and liberty and our pursuit of happiness. What is more vital to the people?
> "... All too long the public concept of courtroom proceedings and demeanor has been the antiquated or distorted motion picture portrayals. It is time the people were shown the truth about their courts."[19]

It is undoubtedly true that if more people could be permitted to observe actual and properly conducted judicial proceedings, the public would receive fewer misconceptions from, and would be less inclined to be misled and amused by, the objectionable histrionics and the distorted portrayals that occur in some of the simulated courtroom proceedings produced by the motion picture and television industry. But the ready answer to that is for the industry to put its own house in order by refusing to show scenes in which courtroom proceedings are distorted, and to demand of scenario writers that such scenes be accurately portrayed.

Proponents of Canon 35, viewing the demand of the news media to televise courtroom proceedings as a mere attempt to provide entertainment for the viewing public, cite such cases as *In re Mack*,[20] in which some newspaper photographers had secretly violated a rule of court against taking pictures in a courthouse corridor of a defendant convicted of first degree murder. They were convicted of contempt, and Justice Arnold, speaking for the majority of the Supreme Court of Pennsylvania, said: "Court rooms and court houses are not places of entertainment, and trials are not had for the purpose of satisfying any sadistic instinct of the public seeking sensationalism."[21] His remarks drew caustic criticism from a minority of the court, who, speaking through Justice Musmanno, said:

> "If this type of reasoning is to prevail, why not then shut out the public from all courthouses? ... This censure on the part of the Majority is in the nature of an indictment of the whole American public because interest in famous and important trials is as intense as the desire to follow the fortunes of baseball, football and basketball teams.
> "The argument of the Majority against public participation in the viewing of court proceedings is the same argument which in ancient days sought to defend star chamber proceedings.... indeed, why not turn back the clock of civilization

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[19] 330 P.2d at 742-43.
[20] 386 Pa. 251, 126 A.2d 679 (1956).
[21] 126 A.2d at 682.

> and . . . let no records be kept, photographic or otherwise. By that process the public will never have an opportunity to satisfy their instincts—not for sensationalism, but for information as to what their supposed servants are doing."[22]

In all fairness and candor, however, it must be observed that the words of the majority in *In re Mack* were not directed at newspaper reporting, but at photography, and it is confidently felt in many quarters that the motive of those desiring to televise courtroom proceedings is prompted, not from a desire to educate the public, but by an eagerness to provide sensational news coverage and entertainment within the broad meaning of that phrase. The language of the majority was not aimed at exclusion of all news media nor of the public from the courtroom, but merely exclusion of the camera.

However, adherents to Canon 35 get little comfort on this *sensational entertainment* versus *education* issue from the expressions of the Supreme Court of the United States in those cases in which attempts have been made to bar salacious materials from the newsstands. For example, the Court said in *Winters v. New York*:[23] "The line between the informing and the entertaining is too elusive for the protection of that basic right [freedom of the press]. Everyone is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine."

It is said that the Canon discriminates in favor of the press against radio and television, in that the newsman is permitted, but not the camera nor the broadcaster. A suggested answer is that reporters of all media are permitted to be present, and that the newspaper presses are not permitted. Reporters are permitted to be present, but their stories are prepared elsewhere and so is the printing.

But the telecaster replies to this by saying that this is no answer to the right of the public to know exactly what is going on: that a news reporter conveys *his* observations influenced by his own conclusions; that as opposed to this necessarily inexact information, the television industry offers an opportunity to bypass the biases, opinions and selectivity of the middleman newspaper reporter by permitting the viewer to obtain an exact picture of the proceedings, whereby, having seen for himself he can draw his own conclusions.

On its face this appears to be a forceful argument, but it it not accurate. It is apparent that a trial is not going to be televised in its entirety. This is necessarily true because the time limitation on pro-

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[22]126 A.2d at 692.

[23]333 U.S. 507, 510 (1948).

gramming would make it impractical for a station to devote its entire time to the telecast of a lengthy trial. Furthermore, news by its very nature, is partial and incomplete.

What then is the nature of this so-called public right? Is it the right of the public to see and hear the witnesses? Is it the right to be entertained or even educated by what is said and done in the courtroom? No.

It is the right of the public to know that its public servants in charge of the trial, the judge and court attendants, are discharging their duties in a fair and trustworthy manner; that witnesses are given fair opportunity to testify fully without illegal interference, restraint or intimidation; that laws are being equally enforced; and the right to have the press comment and criticize what goes on.

It is true that our courts must be so conducted that the public will be convinced that justice is being properly administered; and undoubtedly this knowledge would often be conveyed more accurately and to more people by televising court proceedings than by any other media of news dissemination. But this argument proceeds solely upon the degree of public participation afforded.

The constitutional guarantee that trial be *public* means nothing more than it shall not be *private*. It does not mean that it has to be transferred to the town hall or Madison Square Garden because the courtroom is too small to accommodate all those who would like to attend. Similarly it does not mean that it must be televised for the benefit of those whose duties prevent them from personal attendance, or for those who are too lazy to attend in person.

A trial is not held for public information or education. It is held for the solemn purpose of endeavoring to ascertain the truth in a controversy between the parties and to adjust their rights accordingly, and that is the sole purpose.

So long as the public, including those of the news gathering media, are permitted to be present in the courtroom, there is no danger to a reversion to Star Chamber proceedings nor of an arbitrary and despotic judiciary, and this is the sole danger to be guarded against by public trial.

B. *Freedom of the Press*

In approaching the issue presented by this concept, it must be borne in mind that most of the law on this topic has arisen out of cases in which contempt proceedings have been instituted against publishers who have published articles highly critical of the conduct

or legal rulings of a judge. In a few, the contempt citation has been for violation of an order of court prohibiting the taking of pictures inside the courthouse but outside the courtroom proper. We will take occasion later to see whether a distinction should be made between this situation and a contemporaneous televising of what actually transpires in the courtroom while a trial is in progress.

It is generally said that the main purpose of the first amendment guarantee of a free press (and of freedom of speech) is "to prevent previous restraint upon (as had been imposed by other governments and in early times in this country), or the stifling of efforts pointing toward, enlightenment of individuals upon or concerning their right and beliefs and the duties of their rulers."[24] In determining the extent to which restraints may legitimately be levied upon the press, the courts have applied the so-called *clear and present danger* test. It should be pointed out, however, that protection from previous restraint of publication, does not privilege the publication, nor does it protect the publisher from subsequent actions for libel, nor from contempt, if the article exceeds the legal bounds.

Probably the leading cases out of which the *clear and present danger* test has been evolved, are *Bridges v. California,*[25] *Pennekamp v. Florida,*[26] and *Craig v. Harney.*[27] The test may be stated as follows:

> There must be a clear and present danger that the publication will result in some substantial interference with the proper administration of justice.
>
> The mere liklihood, however great, that a substantial evil will result, cannot alone justify a restriction upon freedom of speech or of the press. The substantial evil to the administration of justice must be extremely serious and the degree of imminence extremely high in order to constitute a clear and present danger before utterances of a newspaper can be held to be contempt of court and before freedom of the press can be restrained.

In this connection it should be made clear that the rule is not applied as a safeguard for judges as persons, but for the function they exercise, i.e., the administration of justice. As an interesting sidelight, consider one of these cases, *Craig v. Harney.* A jury, in a civil case involving a dispute between landlord and tenant, three times refused to bring in a verdict for one of the parties as they had been directed

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[24]In re Porterfield, 28 Cal. 2d 91, 168 P.2d 706, 713 (1946).
[25]314 U.S. 252 (1941).
[26]328 U.S. 331 (1946).
[27]331 U.S. 367 (1947).

to do by the trial judge. Finally they complied with the judge's direction, stating however, that they acted under coercion of the court and against their own conscience. A newspaper severely criticized the actions of the judge, an elected layman, as "arbitrary action," "a travesty on justice," "high-handed action," and many other similar epithets. In reversing a contempt conviction, the majority of the Supreme Court said: "But the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate."[28] Justice Jackson, in a dissent, said in response: "But even worse is that this Court appears to sponsor the myth that judges are not as other men are, and that therefore newspaper attacks on them are negligible because they do not penetrate the judicial armor.... I do not know whether it is the view of this Court that a judge must be thickskinned or just thickheaded, but nothing in my experience or observation confirms the idea that he is insensitive to publicity."[29]

Returning to the main issue, freedom of the press is not an absolute freedom. Indeed no freedom is absolute. When freedom of the press conflicts with other equally important interests, a partial abridgement of freedom of the press may be required. As was said by Justice Frankfurter, concurring, in *Pennekamp v. Florida*:

> "Without a free press there can be no free society. Freedom of the press, however, is not an end in itself but a means to the end of a free society.... The independence of the judiciary is no less a means to the end of a free society, and the proper functioning of an independent judiciary puts the freedom of the press in its proper perspective.
> "....A free press is vital to a democratic society because its freedom gives it power. Power in a democracy implies responsibility in its exercise."[30]

Every situation involving a clash between equally important freedoms must be evaluated upon a consideration of the facts of the given case. In the present inquiry we are weighing two important fundamentals to a free society against each other. In doing so we must guard against two possible dangers; (1) on the one hand, the abridgement of the constitutional guarantee of a free press under the guise of preserving dignity and decorum in the courtroom. (2) on the other hand, permitting individuals to interfere with the orderly administration of justice under the cloak of the guarantee.

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[28]Id. at 376.
[29]Id. at 396.
[30]328 U.S. at 354-55.

As might be expected under the *clear and present danger* test, the set of facts must be strong before a person, acting under a claim of freedom of the press, may be convicted of contempt of court, either on account of published criticism of a judge or for violation of a court order respecting activities outside the courtroom proper. Should the same test be applied to a demand that live telecasting be permitted of the courtroom proceedings itself? If so, it is clear the proponents of Canon 35 carry the burden of proving a strong case that any such televising constitutes a real danger to the administration of justice.

As already seen in the case of *Lyles v. State,* the Supreme Court of Oklahoma refused to apply the Canon where no actual prejudice was shown to have resulted from televising of certain scenes inside the courtroom during a murder trial.

On the other hand in *State v. Clifford,*[31] the court upheld a contempt conviction of a photographer who violated an order of court prohibiting the taking of pictures of a defendant charged with embezzlement. The court said:

> "A judge is at all times during the sessions of the court empowered to maintain decorum and enforce reasonable rules to insure the orderly and judicious disposition of the court's business.
> ". . . . When the court is in session it is under the complete control of the judge whose directions, *reasonably necessary to maintain order and preserve unnecessary disturbances and distraction,* must be obeyed."[32]

In preserving such right, the court does not interfere with the freedom of the press.

It is apparent that a weaker set of facts will satisfy a test which prohibits action that creates *unnecessary disturbances and distraction* than are necessary to create a clear and present danger to the administration of justice. Is there something, then, about the courtroom itself and the proceedings in progress therein, which differentiates them from other aspects of the judicial process of administering justice?

A court trial is essentially a search for the truth. The atmosphere of a courtroom, therefore, should be more akin to that of a laboratory than to that of an arena or a stage. This is true even though many lawsuits involve human drama and tragedy equal to and possibly surpassing the finest of Shakespearean tragedy. Because trials are in

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[31]162 Ohio St. 370, 123 N.E.2d 8 (1954), cert. denied, 349 U.S. 929 (1955).
[32]123 N.E.2d at 10-11. (Emphasis added).

a sense contests under our adversary procedure, they develop tensions, but judicial procedure is not emotional. It is rational and logical, and one of the duties of a judge is to keep it that way in order that these tensions may be lessened.

In the quest for the truth, the material used is evidence. Aside from demonstrative evidence, such as pictures, charts, pieces of personal property, etc., the main source of information is the oral testimony of witnesses.

It is all important, of course, that the witness be permitted and encouraged to use all of his powers of memory and recollection, and that he be uninhibited in his narration of the events of which he testifies.

In addition to the duty of the judge to provide all of the incentive possible for a witness to tell the whole truth, a right of the witness is also involved.

We have noted earlier that when two freedoms clash, one must give way. One of the basic freedoms in a democratic society is the right of privacy, and the question arises immediately to what extent is this right of privacy lost by becoming either a witness to or a participant in a public event?

Consider either an automobile accident or a murder occurring on a public street. The drivers of the cars and the killer unquestionably have become involved in a public event. They have become news, and no doubt have sacrificed some, if not all, of their right of privacy with respect to fair comment and publicity concerning their participation in the event. To what extent they have lost the right not to be photographed during the progress of a trial, is a debatable issue and is the subject of a conflict in the cases. The majority rule is probably to the effect that it is not an invasion of the right of privacy to publish the person's photograph or otherwise give publicity to his connection with the event.

But what about the innocent bystander who merely happened to be present and who witnessed the event? Has he thereby involuntarily and unwittingly sacrificed any of his right of privacy? Yes—to a degree. He can be summoned to court against his will and be required to testify as to what he saw and heard. His duty is to tell the jury what he saw and heard, and he can be compelled to do so under pain of contempt of court if he refuses.

Many such witnesses are by nature timid and nervous. They are not accustomed to talking in public, and in many instances it is a real chore for them. Trial lawyers well know the difficulty in securing the

voluntary attendance of witnesses. Some create excuses and others even deny knowledge of the event. In most instances this is not because they do not know or do not want to testify, but simply because of their fear of the witness stand. They have heard of cross-examination and many have seen the distorted portrayal of it on the television screen, and they are doubtful of their ability to accurately relate their story.

But, whatever their reluctance, they are summoned to court to testify, not to have their pictures taken and broadcast upon hundreds of television screens. Timid and nervous as they may be about talking in public, the human nature of the average person is that he be not photographed for public display. Such an ordeal, without question, would not only hamper such a witness in his recollection and ability to accurately give his testimony, but his demeanor on the witness stand would reflect adversely upon the weight of his testimony in the minds of the jury to the disadvantage of the party for whom his testimony is given.

It is no answer to such a person that the camera itself is hidden in a booth outside the walls of the courtroom. The fact that he knows he is being televised would be sufficient to unnerve him. Nor is it an answer, as provided in the Colorado Canon, that no such witness shall be photographed over his express objection. This requires him to take the affirimative and register a protest in advance in order to protect himself from such an ordeal. He may very well feel that to register such a protest labels him as a weakling of some sort, and pride may prevent him from doing so.

At the other extreme is the danger inherent in the testimony of the witness who is not only willing but anxious to be televised as he gives his testimony. He is a willing actor, and his concern will be with his effectiveness as an actor rather than compliance with his oath to tell the truth and nothing but the truth.

Furthermore, there is the juror to consider. He is summoned and required to serve, unless excused, irrespective of his desires or the inconvenience it may cause him. But here again, he is summoned to listen, ponder and render judgment—not to participate in a glamour contest. In his work as a juror he should be afforded an environment in which he can concentrate on his task as a juror, and not be concerned as to whether his frown is doing an injustice to his naturally photogenic features, or whether his crooked tie and ruffled hair are the butt of jokes around the TV screen at Joe's Beer Tavern or the Country Club.

The natural result of permitting courtroom scenes to be televised

would be to convert the courtroom into a stage for those who can act, and into a place of additional burden for those who are reluctant to testify in the first place.

Freedom of the press, as a result for telecasting courtroom proceedings, must give way in order that the foregoing equally important rights may be fostered and that a fair trial will result.

As a matter of fact, is it really freedom of the press that telecasters want? They do not want to come into the courtroom as newspaper reporters do, take notes, and go to their studios and compose their own programs for telecast. They want, not freedom of the press, but freedom of camera lens and microphones. They want to carry on their business in and from the courtroom.

And what is this business? A recent analysis of the time coverage of the programs telecast by the three leading television systems for a week reveals the following:

Type of Entertainment	*Per Cent*
Big name entertainment	17
Westerns	9
Crime and detective	6
Other fiction plays	16
Morbid and sob-stuff	5
Sports	9
Music (folk, dance, classical)	5
Childrens	9
Guessing panels	4
News and commentary	12
Educational	3
Religious (services and music)	5
	100

The above classification of programs is either what the television industry wants the public to see, or it is what the public wants to see. When the argument is made by proponents of their desire to telecast courtroom proceedings for educational purposes, someone is either lying or badly informed. Eighty per cent of the programs now telecast are for entertainment, pure and simple, and this identifies the television media as one of entertainment.

III. Conclusion

Giving the widest latitude to arguments on behalf of the television industry that what transpires in a courtroom is news, and that it should be televised under the right of freedom of the press; that the

public has a right to see on a TV screen the halting step of a crippled person as he hobbles to the witness stand and to hear the timid voice of the nervous person terrified by the thought that his every movement and word is being broadcast; the overwhelming conclusion is that a Canon prohibiting such telecasting is proper.

But some of the reasons assigned in Canon 35 at it now reads are from the horse and buggy days. Modern day televising techniques do not detract from the essential dignity of the courtroom proceedings. The physical activity associated with such telecasting in no way interferes with the orderly transaction of the court's work. It is difficult to comprehend how the watching of a telecast of what actually goes on in the courtroom could create any misconception with respect thereto in the minds of the public.

In fact, the only valid reason stated in the Canon is that telecasting would "distract the witness in giving his testimony," but the Canon does not state this in the strong terms in which it should be stated. The Canon should be redrafted in somewhat the following language:

> The taking of photographs in the courtroom during sessions of the court, and knowledge by witnesses and jurors that the proceedings are being broadcast or telecast, tends to prevent the witness from being accurate in his testimony and the juror from concentrating on his task, and therefore such photographing, broadcasting and telecasting should not be permitted.