

**News Cameras
in the
Courtroom:**

A Free Press-Fair Trial Debate

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with

Preface by Judge Alfred T. Goodwin

and

Introduction by George Gerbner

A Volume in the Series

COMMUNICATION AND INFORMATION SCIENCE

Melvin J. Voigt, Series Editor



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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 developed 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

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 public 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 defendant, 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

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 research 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 fictional 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 defendants' 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.

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 courtroom (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 defendants 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-

tunities, risks, and stakes involved in courtroom behavior and broadcaster performance is the issue of impact on public perceptions (see Part Four). How does broadcaster control of public perceptions relate, if at all, to the mission of the courts? Even with the best of intentions, does the addition of sights and sounds and the spectacular aspects of certain trials change the nature of the coverage, and, if so, does the difference tend to correct or confirm and legitimize the mythology of the courtroom and other public misconceptions?

The basic policy issue behind these questions is not the freedom of the media to report matters of interest to the public. Broadcast journalists can attend and report trials as can other reporters. The policy question concerns the compatibility of the mission of the courts and the uses of cameras in courtrooms.

The courts, unlike other branches of government, have a limited and sharply defined mission whose performance does not require a public showcase or arena. That mission is to try cases according to law. The mission of the broadcaster is to succeed as a business by catering to, and, if necessary, exploiting, popular tastes. The basic public issue is, therefore, whether linking courts to television will enhance or diminish the integrity and independence of our administration of justice. This book illuminates many facets of that basic issue. It is an indispensable guide to all those involved with the courts, with the media, and with a concern for justice, as we confront the difficult choices on the road that lies ahead.