Television in the Courtroom

On January 26, 1981, Chief Justice Berger delivered the opinion of the U.S. Supreme Court in the case of Chandler et al. v. Florida that televising trials is not necessarily and inherently unconstitutional. The Court pointedly rejected any constitutional right of camera access to courts, but declined to assert, as its plurality held in 1964 in Estes v. Texas, that televising criminal trials is per se violation of due process of law. Therefore, states may experiment despite the admitted risk of prejudice, said the Court, adding that further research may indeed establish that broadcasting criminal trials has an adverse effect on due process.

By the time Chandler sanctioned them, more than half of the states had already proposed, begun, or were conducting experiments with cameras on courtrooms. (No such experiments were allowed in Federal Courts.) Nevertheless, with some studies challenging the validity of the experiments, some state legislatures moving to block the trend, the continued opposition of the American Bar Association (ABA), and despite strong media pressure on vulnerable state courts, it remains to be seen whether the bandwagon would continue to roll or stall at the summit.

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The issue dates back to 1937 when the ABA House of Delegates banned all recording devices from courtrooms. A series of sensational trials, and particularly that of Bruno Hauptmann for the Lindbergh kidnap-murder, had been marred and disrupted by media coverage. Although the ABA canons are only advisory, all state courts except Colorado and Texas followed the ban. In 1965 the U.S. Supreme Court overturned the conviction of Texas financier Billie Sol Estes on swindling charges, arguing that the psychological effects and political potential of television trials is inherently prejudicial. The Estes case appeared to settle the issue. However, the lure of sensational trials, steady media lobbying, changes on the courts, and a shift toward state's rights slowly turned the tide.

Proponents of cameras in the courts noted that Estes may have been limited to circumstances prevailing at that time, and the opinion lacked empirical verification--claims that the Burger court was to revive. By 1977 several states, including Florida, began widely publicized experiments. In 1978 the Conference of State Chief Justices approved a resolution to allow the highest court in each state to decide if, when, and how cameras should enter the courtroom.

Prompted by that decision and armed with available reports from early television trials, a dozen states opened their courtrooms, 17 continued with experiments, and another 15 began to examine the issue.

The proponents argue that improvements in technology have made coverage unobtrusive. The principles of public trial and public interest make coverage desirable. Witnessing actual trials via television improve public understanding of the judicial process, generate support for court reform and instill greater public confidence in the courts.

Opponents insist that the main issues are the effects on participants and the public of televising selected and edited scenes from sensational trials. The additional notoriety due to television coverage would hurt some defendants and help ambitious judges or attorneys. Competition for high ratings rather than the need for public information would determine what is televised. Picked and edited to grab audiences brought up on courtroom drama, real trial scenes would fortify rather than rectify the mythology of television trials.

The legal profession is split on the issue. Of a sample of ABA members responding to a survey published in the September 1979

issue of the ABA Journal, 75 percent agreed that "Television cameras in the courtroom would tend to distract witnesses;" 70 percent thought that television will go only for the sensational; 64 percent believed that lawyers and judges "grandstand for the television audience;" and only 37 percent responded that "Televised courtroom proceedings would enhance the public conception of our system of justice."

The media generally plugged for allowing cameras in courtrooms and welcomed the Chandler decision. But there were dissenting voices. "The courts are playing with social dynamite," wrote syndicated columnist Richard Reeves. The Washington Star editorially wondered about the wisdom of experimenting with the life, liberty, and reputation of defendants and warned that "Only the very naive will suppose that television, once admitted to trials, may not change the texture and even the substance of justice, as it has changed the texture and substance of politics." And James Reston of the New York Times pointed out that although the chief purpose of a trial is to insure fairness, "It's hard to argue that the cameras would increase the rights of the defendant by increasing the size of the audience. "The many dangers that the Court said lurk in its Chandler decision

are still to be decided, Reston warned.

A series of studies conducted at the University of Pennsylvania's Annenberg School of Communications explored some of them. One evaluation of the 22 reports of state experiments revealed a lack of explicit definitions, procedures, controls, and other requirements of valid scientific experimentation. None of the experiments focused on the effects of adding sight and sound to the already permissible reporting, or on the selection and editing process.

Another study found that the desire to improve media relations and to enhance public relations were the chief reasons given by state courts for launching experiments with televised justice. Two-thirds of the committees appointed to draw up guidelines and monitor the experiments involved representatives of the media. Most state courts used unevaluated reports and testimonials of earlier experiments in justifying their decision to admit cameras. Although most states were shown how the equipment worked, only one state court actually witnessed an edited sample newscast of a trial prior to reaching its decision.

Despite, or perhaps because of, the Chandler decision, the issue of cameras in

the courtroom remains one of the most crucial and troublesome in the history of judicial administration. It involves questions of public information and enlightenment, risk of prejudice and further distortion, and the integrity and independence of the judicial process itself. Despite the Court's call for scientific evidence, 1981 closed without the launching of scientifically valid independent research of national scope on these issues. Their resolution seemed still in the distant future.