

Visual Impact: Cameras in the Courtroom and Their Impact on Victims' Rights*

Sensationalized coverage of criminal trials by print and electronic media is commonplace in today's society and often causes harm to victims of the crimes.¹ Historically, judges have not considered the rights of victims and witnesses when determining whether cameras should be permitted in the courtroom to record criminal proceedings. This article details the beginning of press coverage of the judicial system, through an era where the press' desire to record trials was first balanced with a defendant's right to due process, to the present – a time when courts are beginning to examine the effect of press coverage on victims' rights.

The Early History

Conveying the facts, circumstances and results of trials to those outside the courtroom has occurred since biblical times.² In this tradition, England had complete freedom of the press in 1694, paving the way for that right to appear in the United States Constitution,³ and providing the American press the authority to report on trials.

The reporting on trials in America expanded beyond print media in 1925 with the Scopes trial,⁴ which was broadcast over the radio.⁵ News photographers were also permitted to take photographs during critical junctures of the Scopes trial.⁶ In 1935, the first visual recording of a trial occurred; a newsreel camera was hidden in the courtroom during the trial of Bruno Richard Hauptmann (who was subsequently convicted of kidnapping and murdering the baby of Charles Lindbergh), making the Hauptmann trial “the first to show trial proceedings by audio-visual technology to a remote viewing audience.”⁷

As a result of the media presence in the Hauptmann trial, in 1937 the American Bar Association (ABA) adopted Canon 35 of the Canons of Judicial Ethics, declaring that all photographic and broadcast coverage of courtroom proceedings should be prohibited. All but three states followed this recommendation of the ABA. Despite this, the first live televised trial occurred in Waco, Texas in 1955,⁸ where defendant, Harry Washburn, when asked whether he objected to live television coverage, replied, “Naw, let it go all over the world.”⁹

The Supreme Court Addresses Cameras in the Courtroom

The issue of whether the United States Constitution entitles the press to broadcast or videotape judicial proceedings was first presented to the United States Supreme Court in *Estes v. Texas*, 381 U.S. 532 (1965). By plurality vote, the Court held that the right to access does not include the right to televise proceedings. Justice

Harlan's concurring opinion clearly enunciated the limits of the First Amendment with respect to cameras in the courtroom:

Once beyond the confines of the courthouse, a news-gathering agency may publicize within wide limits, what its representatives have heard and seen in the courtroom. But the line is drawn at the courthouse door; and within, a reporter's constitutional rights are no greater than those of any other member of the public. Within the courthouse the only relevant constitutional consideration is that the accused be accorded a fair trial. If the presence of television substantially detracts from that goal, due process requires that its use be forbidden.

Id. at 589.

In *Estes*, the justices extensively discussed the rights and interests of the defendant and the press. They failed, however, to even note the impact that televising trials would have on victims of crime.

In 1981, the United States Supreme Court revisited cameras in the courtroom in *Chandler v. Florida*, 449 U.S. 560 (1981). The Court held that television coverage of a criminal trial does not result in a per se violation of a defendant's due process rights. *Id.* at 574. Again, the Court's analysis focused solely on the constitutional rights of defendants, not on the impact that cameras in the courtroom would have on victims.

Since the Court's decisions in *Estes* and *Chandler*, every state has established constitutional or statutory rights for victims, and a federal victims' rights statute was enacted. The establishment of rights for victims has changed the landscape of the criminal justice process. The legal analysis required to determine whether cameras should be permitted in the courtroom or whether a portion of a criminal proceeding may be broadcast must now include the constitutional and statutory rights of the victim in addition to the rights of the press and defendants.

Victims' Rights to Privacy and To Be Treated With Fairness, Respect, and Dignity

In many jurisdictions, victims have been afforded constitutional and statutory rights to privacy¹⁰ and to be treated with fairness, respect, and dignity.¹¹ A victim's rights to privacy and to be treated with fairness, respect, and dignity may be uniquely invaded by television broadcast because "in many trials, a witness is asked questions of a personal nature during examination by counsel."¹² It is within the realm of courts and legislatures to protect victims from the harmful effects of cameras in the courtroom as "[c]ertain individuals participating in a criminal prosecution, such as victims and witnesses, would prefer to not have their involvement publicized."¹³ Although by 1985 at least 40 states allowed cameras in their courtrooms,¹⁴ subsequent legislation and court rulings have helped protect victims from having their rights violated.

Protection for victims from cameras in the courtroom exists in many forms, including a state supreme court guideline prohibiting certain proceedings from being recorded and/or broadcast in their entirety, such as prosecutions for sexual offenses,¹⁵ and a statute prohibiting audio-visual coverage of victims in prosecutions for rape and other criminal sexual acts.¹⁶ In addition, the majority of states allow judges to use discretion when determining whether to permit cameras in the courtroom at all.¹⁷ Courts have also allowed for images of victims to be obscured during the broadcasting of criminal trials;¹⁸ however, while the concept of masking a victim appears to protect the victim's image from being displayed, such protection is not a certainty, and "if a witness' face were inadvertently televised, the harm cannot be undone."¹⁹

While the protections mentioned above aid only some victims – those that fall within the specific categories covered by the legislation – other victims may still be subject to the privacy invasion of being on camera. Nonetheless, of the states that permit cameras in the courtroom, "fourteen wisely allow witnesses to bar the

televising of their own testimony.”²⁰ This “flat rule requiring judges to ban the televising of an objecting witness’ testimony is preferable” because it assures the witness that their privacy will be protected, “it enables attorneys to assure reluctant witnesses before trial that they will not be televised against their will,”²¹ and it provides comfort to testifying victims that, at least with respect to cameras in the courtroom, their rights to fairness, respect, and dignity will be enforced.

Conclusion

The press does not have a constitutional right to broadcast criminal trials, nor do defendants have a constitutional right to have their trial broadcast. Conversely, in several states, victims do have an explicit right to prevent the broadcast of that portion of a trial in which they are participating. Additionally, protection from cameras in the courtroom is implicit in victims’ constitutional and statutory rights to privacy and to be treated with fairness, respect, and dignity. As a participant in the criminal justice process, victims’ constitutional and statutory rights must be enforced to the same extent as other participants. Thus, compliance with rights requires that any decision regarding cameras in the courtroom include consideration of the legal rights of the defendant, the media, and the victim.

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1 See Cotsirilos & Jenner, *Cameras in the Courtroom -An Opposing View*, ILL. TRIAL LAW. J. 24, 59-60 (Fall-Winter 1982) (noting that television coverage magnifies the trauma of crime victims); Note, *Televised Trials: Constitutional Constraints, Practical Implications, and State Experimentation*, 9 Loy. U. Chi. L.J. 910, 918 (1978) (noting, “The camera’s unique ubiquitousness dictates a reconsideration of conventional notions of privacy when evaluating that medium’s impact on a judicial proceeding.”).

2 Daniel Friedmann, *From the Trial of Adam and Eve to the Judgments of Solomon and Daniel*, 5 Rutgers J.L. & Religion 3 (2003).

3 See U.S. Const. amend. I (providing, “Congress shall make no law . . . abridging the freedom . . . of the press.”).

4 Frequently referred to as the “monkey trial,” John T. Scopes, a teacher, challenged Tennessee’s Butler Act, which prohibited the teaching of evolutionary theories that denied the biblical version of Divine Creation. Paul Thaler, *The Watchful Eye: American Justice in the Age of the Television Trial* 20 (1994).

5 *Id.*

6 *Id.*

7 Christo Lassiter, *TV or Not TV – That is the Question*, 86 J. Crim. L. & Criminology 928, 936 (1996).

8 Stephen D. Easton, *Whose Life is it Anyway?: A Proposal to Redistribute Some of the Economic Benefits of Cameras in the Courtroom from Broadcasters to Crime Victims*, 49 S.C. L. Rev. 1, 10 (1997).

9 *Id.* at 11.

10 See, e.g., *Roe v. Wade*, 410 U.S. 113, 152 (1973) (recognizing “that a right of personal privacy, or a guarantee of certain areas or zones of privacy do exist under the Constitution”); Cal. Const. art. I, § 1; Idaho Const. art. I, § 22; Mont. Const. art. II, § 10; Wis. Const. art. I, § 9m.

11 See, e.g., Ariz. Const. art. II, § 2.1; Idaho Const. art I, § 22; Ill. Const. art. 1, § 8.1; La. Const. art. I, § 5; Mich. Const. art. I, § 24; Miss. Const. art. III, § 26A; N.M. Const. art. II, § 24; Ohio Const. art. I, § 10A; Okla. Const. art. II, § 34; S.C. Const. art. I, § 24; Tex. Const. art. I, § 30; Wis. Const. art I, § 9m; Va. Const. art. I, § 8-A.

12 Note, *Televised Trials: Constitutional Constraints, Practical Implications, and State Experimentation*, 9 Loy. U. Chi. L.J. 910, 918 (1978).

13 Scott M. Matheson, Jr., *The Prosecutor, the Press, and Free Speech*, 58 Fordham L. Rev. 865, 884 (1990).

14 Easton, *supra* note 8, at 13.

15 N.J. Directives Dir. 10-03.

16 N.Y. Jud. Ct. Acts. Law § 218(7)(f).

17 Christo Lassiter, *An Annotated Descriptive Summary of State Statutes, Judicial Codes, Canons and Court Rules Relating to Admissibility and Governance of Cameras in the Courtroom*, 86 J. Crim. L. & Criminology 1019 (1996).

18 Paul Thaler, *The Watchful Eye: American Justice in the Age of the Television Trial* 39 (1994) (describing the blue-dot used by CNN to mask the identity of the victim in the rape trial of William Kennedy Smith).

19 *United States v. Moussaoui*, 205 F.R.D. 183, 187 (E.D. Va. 2002) (discussing harm to witnesses by televising trials and that certain remedial precautions to protect a witness' privacy are not guaranteed).

20 Nancy T. Gardner, *Cameras in the Courtroom: Guidelines for State Criminal Trials*, 84 Mich. L. Rev. 475, 496 (1985). *See, e.g.*, Md. Rules, Rule 16-109(e)(1).

21 *Id.* at 496.