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# Prime Time Crime: TV in the Courtroom

by Andrew S. Katz

*The criminal lawyer rose from his seat at the defense table to make the routine motion for acquittal following the presentation of the state's evidence. He stood facing the watchful eyes of the judge and the unobtrusive lens of the television camera wondering if many viewers had switched to the Courthouse channel during a commercial. . .*

If the practice of television coverage in the courtroom overcomes the constitutional and ethical hurdles it now faces, what is now a pilot program in the State of Florida will become a regular service of broadcast journalism. On July 5, 1977, the Supreme Court of Florida ordered a test period for television broadcast of trials by declaring, that for one year, "the same rules of law applicable to inclusion or exclusion of the press or public at particular proceedings or during the testimony of particular witnesses shall apply to the electronic media and still photographers."

The obstacles preventing cameras in the courtroom were placed, in part, by the American Bar Association in the form of Canon 35, which prohibits still photography, radio, and television in court proceedings. The United States Supreme Court gave impetus to the ban by overturning the conviction of Billie Sol Estes for fraud in 1965, on the ground that the television broadcast of the trial without the defendant's consent, denied him a fair trial. Today, one of the staunchest opponents to televised oral argument in the Supreme Court is Chief Justice Warren E. Burger, who consistently refuses to allow electronic coverage of his remarks when he speaks in public. This resistance to the electronic media by the judicial establishment has resulted in superficial news

coverage of what is happening in today's courts. The hasty renderings of the courtroom artist seem out of place in a medium that utilizes global live-remote coverage of the news via satellite.

Due process has been the legal principal used to bar broadcasting of trials. The presence of TV equipment in the courtroom coupled with the psychological effects of being "on camera" were originally believed to impair the ability of a defendant to have a fair trial. Thirteen years later the fears expressed by the Supreme Court in its Estes opinion may now be groundless. Improvements in television equipment make the presence of TV less obtrusive, without the need for special lighting. Also, the American public has become much more accustomed to the notion of being televised, especially since closed circuit TV now scans many public places. Until the Supreme Court of Florida's decision to open up their courts to TV, there has been no test to determine if the misgivings concerning the Estes opinion have any basis today.

During the one-year test period, the Florida courts, with some exceptions, will be open to the television camera. A defendant has already taken the matter to federal district court, claiming it would be unconstitutional to try him with television coverage of the trial over his objection. U.S. District Judge James King abstained from ruling on the issue. He has declared that all such defendants must stand trial first, appeal through the Florida system, and then take the issue into federal court. The Florida Supreme Court is taking a

calculated risk in its decision, because, by the mere presence of a TV camera at trial, an entire year's worth of state convictions may be subject to reversal in federal court, despite the severity of the crime.

If the Florida pilot-program passes the test of constitutionality, what is in store for the future? CBS newsman Fred Graham, speaking before the Conference of Chief Justices of the state supreme courts early this year, pinpointed some possible developments. First, he predicts an increase in the coverage of trial and appellate courts by radio and television. Perhaps in response to Mr. Graham's comments, the Conference of Chief Justices adopted a resolution for a committee to study amending "the Code of Judicial Conduct to permit electronic and photographic coverage of the courts. . . under guidelines that would preserve the dignity and decorum of [our] judicial proceedings." In a similar vein, an ABA fair trial/free press committee recently released a revised draft of proposed standards that, for the first time, recognizes that cameras in court are by themselves "not. . . inconsistent with the right to a fair trial."

Another development postulated by Mr. Graham is the opening up of a second layer of constitutional questions, once the due process issue has been settled. He wonders whether there are rights *not* to be on television-rights that are distinguishable from the right not to be mentioned in the public press. Television in the courts may pose new privacy issues as well. Already two exceptions have been made in the blanket access given television by



photo by George Martin Kripner

the Florida courts-one case involving undercover police informers and another involving relocated government witnesses. All were allowed to testify without the presence of TV cameras. Certainly the potential harm to the privacy interests of the individual will have to be considered in this area.

The momentum for increased courtroom television coverage is gathering. What might evolve is a new standard for how much the public is entitled to know and how much the individual is entitled to conceal. In any event, the time is probably not too distant when the home viewer will watch justice dispensed from the comfort of his armchair.

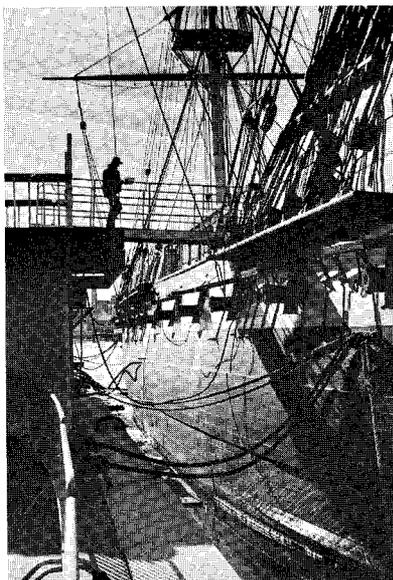


photo by John Clark Mayden

nology enjoys a favored status in our culture.

However, the carefree exploitation of human and natural resources through technological progress is not without its antagonists. For example, the pervasive influence of a scientific ideology in education and the social sciences draws criticism from those fearful of the dehumanization of the art of teaching and the study of man's behavior; other commentators decry the "alienation" of workers in industry that has been subject to extensive technological influence.<sup>1</sup>

The progress of the "new industrial revolution" has had a particularly strong impact on the environment. The application of human expertise to man's surroundings entails for many an environmental crisis. As one writer notes:

The new pessimism toward technology and its role in society can thus be traced to two major realizations: The first is that modern technology faces us with grave threats to our lives, to our health and to our ability to enjoy our surroundings, and to our liberties, and these threats now weigh heavily against the unmistakable blessings technology has made possible. Second, there is little room for hope that these threats can be countered either quickly or easily. . .

J. G. Speth, *The Federal Role in Technology Assessment and Control*, in *FEDERAL ENVIRONMENTAL LAW 422* (E. Dolgin and T. Guilbert ed. 1974).

Although technology in itself need not be inimical to the well-being of man and his environment, its deployment often has been accompanied by the use of unsound judgment and ignorance of its potential harm to the ecology of which man is a part. The essential task facing environmentalists, then, is to provide information

<sup>1</sup> It has been suggested that intensive concentration of technology in the workplace alienates the laborer from his work-product, as well as increasing social stratification with the emergence of special interest groups tied to the use of technology (such as "technocrats"). See H. Lefebvre, *THE SOCIOLOGY OF MARX 196* (1969). Alienation, in the political sense, describes a loss of control over the means of production. Commentators note the lack of an active, interested involvement by workers in industry with a high concentration of technology. "Technological factors are paramount also in their impact on self-estrangement, since the machine system largely decides whether the worker can become directly engaged in the activity of work or whether detachment and monotony more commonly result." R. Blauner, *ALIENATION AND FREEDOM 8* (1964).

## Recent Decisions

MARYLAND AND DISTRICT OF COLUMBIA



### Technology and the Environment: NEPA Strikes a Balance

by John Jeffrey Ross

Until recently, only a minority has quarrelled with the rampant expansion of technology in this country. Applied science has produced both rapid economic growth and an enviable standard of living for a substantial number of people. Because economic and governmental progress depend heavily on man's facility to alter and control his macrocosm, tech-