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# Radio, Television, and the Administration of Justice

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RADIO, TELEVISION, AND THE ADMINISTRATION OF JUSTICE. By the Special Committee on Radio and Television of the Association of the Bar of the City of New York. New York: Columbia University Press. 1965. Pp. xii, 321. \$8.00.

Canon 35 of the Judicial Ethics of the American Bar Association states in part:

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings detract from the essential dignity of the proceedings, distract participants and witnesses in giving testimony, and create misconceptions with respect thereto in the mind of the public and should not be permitted.

Representatives of the broadcast media have insisted that Canon 35 is a violation of freedom of the press, that the public has a constitutional right to know about proceedings in the courts, that the decision as to whether broadcasting and photography should be permitted in courtrooms should rest with individual judges, and that the Canons of Judicial Ethics are not laws, but merely recommended standards for judges to follow. (However, more than half the states have officially adopted the equivalent of the substantive provisions of Canon 35 in their rules of court. The federal courts, in their Rules of Criminal Procedure, have adopted Rule 53, which explicitly prohibits photography and broadcasting.)

The legal profession has consistently maintained the position that broadcasters with their paraphernalia interfere with the defendant's right of fair trial, by distracting the participants and lowering the essential dignity of the courtroom. The legal profession has further maintained that extensive pre-trial publicity makes it difficult, if not impossible, to find jurors who have not been influenced to some extent by partial information, sensational reporting, or editorial bias.

On this vitally important issue there have been accusations and counter-accusations, impassioned pleas for change, a few carefully reasoned arguments for preserving the status quo, and unfortunately, too many careless and emotional arguments. At the extreme conservative pole, Dean Erwin Griswold wrote that "it is a matter of real professional concern that the possibility of modifying Canon 35 is *even a subject for*

*serious consideration* within the organized Bar of the United States. . . . Every factor of professional responsibility and of the concern of lawyers for the fair and equal administration of justice, indicates clearly that the Bar would be acting contrary not only to its best traditions but to its real and vital obligations if it should weaken in this matter."<sup>1</sup> (Emphasis added.)

At the opposite extreme, New York reporter Gabe Pressman once posed the question: "Why is no attempt being made to bridge the gap between television journalism and the courts? Sometimes in my more cynical moments I attribute it to a subconscious fear on the part of some members of the bar—a fear of the fantastic intrinsic ability we have to mirror reality—of the ability we might have, if our cameras focussed on the court system, of arousing the citizens to make reforms—reforms that are so badly needed."<sup>2</sup> Unquestionably each side has tended to overstate its case: the legal profession exaggerates the "circus atmosphere" of television news coverage, and the broadcasters exaggerate the stuffiness and conservative thinking of the legal profession. What has been missing until now in the literature of this controversy is a book which presents the issues in a scholarly and dispassionate manner.

*Radio, Television and the Administration of Justice* is a documented survey of materials by the Special Committee on Radio and Television of the Association of the Bar of the City of New York. The book is intended to provide background information for those seriously interested in the issue of free press versus fair trial. In Part One, the Committee surveys the various types of broadcasts and telecasts that may affect the administration of justice in the criminal and civil courts. Four chapters consider radio and television programs that involve judges, jurors, prosecutors, or defense counsel. One interesting chapter includes reports of interviews and statements by the accused on radio or television. Other chapters concern news programs, broadcast or televised grand jury proceedings, and collection of evidence by radio and television reporters.

Harold R. Medina, the chairman of the Committee, states in his introduction to the book that Part One is "incomplete, perhaps, in the sense that it does not describe or refer to every noteworthy incident or even every type of incident involving the possible impact of radio and television on the administration of criminal or civil justice. But it does include a generous sampling of specific, generally documented, occurrences on radio and television that may fairly be said to be relevant to the prob-

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1. Griswold, *The Standards of the Legal Profession: Canon 35 Should Not Be Surrendered*, 48 A.B.A.J. 615 (1962).

2. Pressman, *Bar's Attack on Press Undeserved*, TELEVISION NEWSFILM: CONTENT (1965) (a special report by New York, Time-Life Broadcast).

lem under consideration. The selection has been made with the view of illuminating the various separate phases or segments of the general subject of *Free Press v. Fair Trial*.”<sup>3</sup>

In Part Two, the Committee presents a gathering of documentary materials: Canons of Ethics, court rules, statutes, court opinions, and analogous rulings affecting the use of radio and television in and around the courts. This part includes several letters from chiefs of police and law enforcement administrators concerning their policies or specific rules for dealing with the mass media in criminal cases. Probably the most interesting reading in the entire book is the complete transcript of the Supreme Court decision reversing the conviction of Billie Sol Estes on the ground that televising and broadcasting parts of his trial over Estes' objection deprived him of his right to due process under the fourteenth amendment. The book concludes with references to free press versus fair trial in the Warren Commission Report, and a selective bibliography on the subject.

It is difficult and even unfair to criticize this book. It is a workmanlike job of gathering information and organizing it into a reference work which will be of value for many years. There is, however, a serious omission in the collection of materials. The presentation of the media point of view is extremely inadequate; except for the printing of the guidelines adopted by C.B.S. News, the media arguments are treated in passing reference. Most broadcasters would admit that there have been some embarrassing occasions in the past, when the media did indeed contribute to a “circus atmosphere.” However, responsible media people think that the professions of journalism and broadcasting have matured, and should be allowed to prove themselves under carefully organized and controlled conditions.

Since the book was copyrighted in 1965, it was probably impossible to include two important references which should be read by anyone who wishes to investigate the subject in depth. The Radio Television News Directors Association, in cooperation with Time-Life Broadcast, Inc., published a report entitled *Television Newsfilm: Content*,<sup>4</sup> which has sections devoted to “Covering the Courts and Crime News,” “Investigative Reporting,” and “Covering State Government.” The other publication is *Fair Trial vs. A Free Press*, which contains papers by Zelman Cowen, Alfred Friendly, Gene Blake, Donald H. McGannon, and W. H. Parker.

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3. Pp. vii-viii.

4. TELEVISION NEWSFILM: CONTENT (1965) (a special report by New York, Time-Life Broadcast).

The publication is an occasional paper published in 1965 by the Center for the Study of Democratic Institutions, in Santa Barbara, California.

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