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TELEVISED TRIALS IN ILLINOIS: SHOULD IT BE VIEWED AS A PRIVACY QUESTION?

The debate over televised coverage of courtroom proceedings in Illinois continues. For most states, the question of the propriety of media coverage involved a weighing of the constitutional guarantees of freedom of the press, the right to a public trial, and the right to a fair trial. Although some courts have recognized the right of privacy in this context, the trial participant's privacy interest has been regarded as "a weak reed to rely upon to prevent a telecast of a trial."¹ Given the broad scope of disclosure inherent in broadcasting, however, it is necessary to reevaluate the trial participant's right of privacy.

The Illinois Supreme Court should examine the right of privacy along with the right of free press, the right to a public trial, and the right to a fair trial when it makes its decisions concerning the appropriateness of televised trial proceedings. Recently, in *In re Photographing, Broadcasting, and Televising Proceedings in Illinois Courts*,² the court, in aligning with a majority of states, lifted its ban on courtroom photography and authorized experimental broadcast coverage of appellate level proceedings for one year. The sharply divided court did not, however, extend broadcast coverage to the trial level.³ Now that the experimental period has expired, the court is expected to reconsider the issue of whether to authorize televised trials.

Prior to the court's latest pronouncement in this area, it had held that cameras should not be permitted in the courtroom because their presence was "not in keeping with the dignity a court should maintain."⁴ Following the United States Supreme Court's sanctioning of cameras in the courtroom in *Chandler v. Florida*,⁵ however, the trend among states has been to allow cameras in the courtroom at the trial level.⁶ Indeed, even the Illinois Supreme Court has noted that, with the advent of substantial technological advancements in the communications industry, some of its previous

1. Yesawich, *Televising and Broadcasting Trials*, 37 CORNELL L.Q. 701, 712 (1952).

2. 11 MEDIA L. REP. (BNA) 2634 (1983).

3. *Id.*

4. *People v. Munday*, 280 Ill. 32, 67, 117 N.E. 286, 300 (1917).

5. 449 U.S. 560 (1981).

6. See Graves, *Cameras in the Courts: The Situation Today*, 63 JUDICATURE 24 (1979).

concerns had been limited or reduced substantially.⁷

It has long been recognized that the use of the news camera, which is able to capture one's image and transmit it for the benefit of a mass audience, poses an especially oppressive threat to the individual's privacy interests. Nonetheless, most courts have refused to recognize the individual's right of privacy during a trial because the information published is considered to be public information.⁸ The underlying rationale is that, because the published information is part of the trial record, which is open to the public, it was never private. This reasoning, however, fails to take into account that much of what goes on during a trial receives little attention in standard news coverage and is not expressed in the trial record.

Moreover, courts have analogized camera coverage to newspaper coverage in ruling that the individual does not have a right of privacy during a trial.⁹ The qualitative differences between television coverage and newspaper coverage, however, make television coverage *sui generis*. The auditory impact and the visual delivery of television clearly exceed that of newsprint because they allow the viewer to receive a constant and thorough inspection of the trial participants. Thus, there exists the "potential for intimate close-ups and widespread exposure of not only the name of the [participants], but of their faces and features, emotions, and possibly even their private thoughts."¹⁰

Not only must the participant be subjected to a serious assault upon his privacy interest during the trial, he may also be subjected to the unavoidable notoriety that accompanies the media's promotional messages. It is this type of extensive and unwarranted disclosure that the right of privacy was intended to protect.¹¹ Hence, the uniqueness of television coverage of trials and its attendant media hype, require a reevaluation of the trial participant's right of privacy.

This reconsideration is especially appropriate in light of the fact that the participants in a trial attend for various reasons and in various circumstances. Some appear willingly; others appear under compulsion of a court order. For some, such as judges and court personnel, the trial may represent a test of their detachment and objectivity. For others, the trial may represent intense, private

7. *In re Photographing*, 2634, at 12 (Simon, J., concurring).

8. *Elmhurst v. Pearson*, 153 F.2d 467, 468 (D.C. Cir. 1946); *Berg v. Minneapolis Star and Tribune*, 79 F. Supp. 957, 960 (D. Minn. 1948).

9. Comment, *Televised Trials: Constitutional Constraints, Practical Implications, and State Experimentation*, 9 LOY. U. CHI. L.J. 910, 914 (1978).

10. Boone, *TV in the Courtroom: Is Something Being Stolen From US?*, 9 HUM. RTS. 24, 27 (1981).

11. Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 204 (1890).

grief, shame or fear. Regardless of one's personal stake in the outcome, the presence of the television camera only serves to augment the existing high level of intense emotion. In addition, a witness' or juror's reticence, whether originating from reclusiveness or from fear of reprisals, may be severe and possibly debilitating to the trial. This behavior can only undermine the goals of efficient and fair judicial administration.

Because the courts have the responsibility to supervise all aspects of the trial, they must ensure that camera exposure does not subject trial participants to privacy invasions beyond what is inherent in a traditional public trial. Admittedly, private individuals thrust into the public domain must relinquish some expectation of privacy in favor of the public's right to be informed of newsworthy events. This does not mean, however, that the individual's privacy rights must be cast aside to make room for television cameras. In fact, most courts have recognized that, in situations involving sex crime victims, children, informants, and undercover police officers, the trial judge may, in his discretion, exclude spectators from the courtroom if necessary to prevent embarrassment or emotional disturbance of a trial participant.¹²

Although the public's right of access is not absolute, the individual's right of privacy is likewise subject to restraints. Privacy interests, especially in what has traditionally been considered a public forum, must yield to other compelling constitutional considerations such as the right of free press, the right to a public trial, and the right to a fair trial. Therefore, it is necessary to balance these considerations in conjunction with the indispensable right of privacy in determining the permissible extent of invasion of one's privacy interests during a televised trial. On balance, however, the scale tips in favor of permitting televised trials.

The implementation of televised trials need not force jurors, witnesses, litigants, or other participants to endure a serious assault upon their privacy interests in order to accommodate other competing constitutional considerations. Because cameras in the courtroom present a unique threat to a trial participant's right of privacy, the Illinois Supreme Court, if it decides to implement camera coverage at the trial level, should adopt a limited access plan that will preserve the individual's privacy interests during a televised trial. No other result can protect and preserve the trial participant's human dignity.

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12. 75 AM. JUR. 2d *Trial* § 146 (1974); R. HUNTER, *FEDERAL TRIAL HANDBOOK* § 7.9, at 72 (1st ed. 1974).

