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AUTHOR Forston, Robert F.; Forston, Anne L.
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ABSTRACT

Canon 35, concerning improper publicizing of court proceedings, is one of the professional codes of the American Bar Association. First adopted in 1937, it has twice been amended and is widely observed by most courts throughout the United States. Reasons for barring radio or television coverage of trials are based on concerns that broadcasting would detract from courtroom dignity, distract participants and witnesses, and create misconceptions about the true nature of trials in the minds of viewers. Opponents of Canon 35 claim that broadcasting of trial proceedings would make them truly public. They also feel that this broadcast ban infringes on the public's right to know about administration of justice and thus denies freedom of the press and freedom of information. Broadcasting in the courtroom can also serve to educate the public in judicial matters. The worth of Canon 35 could be determined by setting it aside for an experimental period, allowing trials to be broadcast on a selective basis. This procedure could then be evaluated by independent observers to determine the actual effects of this type of publicity on court proceedings. (RN)

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COURTROOM ACCESS: CLARIFICATION AND RECOMMENDATION FOR CANON 35

Robert F. Forston

and

Anne L. Forston

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Speech Communication Department

Drake University

Des Moines, Iowa

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The two opposing extremes in the American Bar Association's Canon 35 debate are colorfully portrayed by the following quotes:

". . . Opposition to televised trials eventually will become as futile as trying to hold back the sea with a Dutch boy's finger in the dike."[1]

"Trial by television is . . . foreign to our system."[2]

Canon 35, concerning "Improper Publicizing of Court Proceedings," is one of the American Bar Association's codes of professional and judicial ethics.

Although this specific debate started with the original adoption of the Canon on September 30, 1937,[3] the larger more encompassing debate goes back several centuries, even before the founding of our country. The fight for public trials instead of the Star Chamber Courts and the fight to print the proceedings and speeches of Parliament took place for almost two-hundred years.[4] When partial access to the judicial and legislative bodies had been gained, the press continued to seek additional freedom.

The immediate issues involved in the current debate, however, did not begin until photography and radio made their presence known in the courtroom with the final insult occurring in 1935 during the Hauptmann kidnap-murder trial. The Hauptmann trial, concerning the murder of Charles A. Lindberg, Jr., was turned into a sensational, circus-like affair.[5] Such an incident with the history of other previous problems[6] motivated

the American Bar Association to adopt the now controversial Canon 35.[7] This Canon was amended in September, 1952, to include the "televising" of court proceedings and the distracting of witnesses in giving testimony.[8] In 1958, the American Bar Association appointed a special committee to study the wording of Canon 35, and again in 1963, on recommendations of the special committee, the Bar Association modified the Canon's wording but left the essential meaning unchanged.[9]

Since Canon 35 is only a recommended code, it is not legally binding, but it is widely observed by most courts throughout the country with few exceptions.[10] Hence, for almost thirty years the broadcasters have been fighting to establish themselves on an equal basis with the other news media in the courtroom to enable them to utilize the "tools of their profession."

The purpose of this essay is (1) to identify as many arguments as can be found concerning equal access to the courtroom by electronic journalism, (2) to clarify the debated arguments involved by isolating the issues which have some merit from those which are essentially without merit,[11] and (3) to offer recommendations which might help the antagonists of this debate to seriously consider ways of resolving the relevant issues involved in the Canon 35 discussion. In order not to be exceedingly repetitious, this author will interweave the first and second parts of the purpose by identifying and discussing the merits of the traditional arguments and

refutations for and against Canon 35. A restatement of the strongest and weakest arguments of both sides and the issues which need further study will be drawn from the above discussion. Before concluding the paper with recommendations, the prospects of repealing Canon 35 through present strategy of the broadcasters will be discussed.

PROS AND CONS OF TELEVISING COURT PROCEEDINGS

Arguments Supporting Canon 35

The arguments advanced in support of Canon 35's ban against televising courtroom proceedings are widely varied; however, this writer believes that nine categories will exhaust most arguments employed by the legal field. The Canon itself implies at least three reasons for barring television or radio broadcasting from the courtroom--broadcasting (1) "detract/s/ from the essential dignity of the proceedings /degrades the court/," (2) "distract/s/ participants and witnesses," (3) "create/s/ misconceptions /of the true trial/ . . . in the minds of the public. . . ."[12]

The first implied criticism of televising trials actually involves two parts:

1. Telecasting and viewing of a trial distract from the dignity of the court.

2. Physical Presence of electronic equipment disrupts the decorum of the proceedings.

In reference to the first criticism, Chief Justice Earl

Warren, in a strongly worded concurring opinion to the majority in the Billie Sol Estes Case, states,

> The televising of trials would cause the public to equate the trial process with forms of entertainment regularly seen on television and with the commercial objectives of the television industry.[13]

Former District Judge Robert N. Wilkin also advances a similar argument by indicating that the courts are not for entertaining purposes.[14] Justice William O. Douglas, as well as others, fears televised trials will degenerate into the spectacles of the televised trials in Baghdad where the proceedings did not begin until 7:00 p.m. to insure prime time, and where the judge and prosecutor vied for star billings.[15] Furthermore, Chief Justice Warren recalls the staging of Castro's prosecutions before 18,000 persons in the Havana Stadium.[16]

Opponents of Canon 35 scoff at the above fears. They point out that presidential inaugurations, queen coronations, pontifical Christmas masses from the Vatican, or the funerals of President Kennedy and Sir Winston Churchill were televised, while keeping the essential dignity and serious nature of the events. Supporters for the repeal of Canon 35 argue that trials could also be televised while keeping this same dignity.[17]

Associate Justice Frank H. Hull of the Colorado Supreme Court helps to substantiate that the horrors of Castro's trials need not be typical of televised United States trials by stating:

> With six years of experience behind us, I think it may be stated that none of the ominous possibilities that /Canon 35 admonishes against/ have come to pass in Colorado.[18]

The second part of the first implied criticism against televising trials claims that the physical presence of television broadcasting equipment disrupts the court proceedings.[19] In an address before the Economic Club of Detroit on December 7, 1964, Robert Sarnoff explained this criticism of televised trials by stating, "originally it was contended, not without reason, that bulky broadcasting and lighting equipment would be awkward intrusions upon serious proceedings.[20]

However, it is generally agreed by both sides that this original reason for the adoption of Canon 35 no longer seems to be valid thirty years later. This generally agreed upon point is based upon the qualification that stations involved accomplish the broadcasting through the supervision of the presiding judge with the provision of an "on and off" switch, the pooling of equipment, and the use of the up-to-date tools and techniques.[21] According to one of the staunchest supporters of Canon 35, Richard P. Tankham, in a report before the Proceedings of the House of Delegates of the American Bar Association in 1958,

> . . . We did concede some of their [broadcasters'] arguments, one of them being that the modern equipment for photographing and televising and broadcasting was unobtrusive and could be utilized so as not to be able to be observed in the courtroom.[22]

The broadcasters also quickly concede that the physical presence of equipment may in a few situations detract from the decorum and dignity of judicial proceedings. They maintain, however, that such a criticism need not be valid for

most trials[23] since numerous experimental tests of televised trials before various judges have shown this argument to be unfounded.[24] Some even go so far as to claim that "television is the least obtrusive instrument in the coverage of any hearings or trials."[25]

A third traditional argument for Canon 35 is--

3. Broadcasting equipment introduces psychological effect which distract witnesses, jurors and other trial participants "to the degree that threatens constitutional guarantees of a fair trial for the defendants . . . ."[26]

After an extensive study of this point, Zimmerman and Kaechele conclude:

> There appears to be no one who is willing to say that testifying in court . . . does not cause some psychological reaction in the witness. The question is, how much of it is natural to the situation and how much of it is added because of the presence of the photographic and electronic media?[27]

One might also ask, does this psychological effect inhibit a fair trial?

In Supreme Court case, Estes v. State of Texas, four of the five justices who composed the majority found that telecasting a trial causes prejudice and possible psychological influence on witnesses and jurors. Their view is widely supported by other members of the legal profession.[28] Hennepin County District Judge Donald T. Barbeau, for instance, indicated before the Minnesota Bar Association on June 21, 1966, that a witness might be more reluctant to testify or tend to be less accurate because of increased nervousness due to

telecasting of judicial proceedings.

In addition, the problem exists of influencing witnesses and jurors through televising trials regardless of whether or not he can see the cameras. For example, consider the witness who testifies and is cross-examined for several days, who is called on the phone by friends or seen on the street by acquaintances or even strangers. These comments could conceivably influence later testimony or the decision of the jury.

The main problem with this argument advanced by Canon 35 supporters is that their claims are primarily statements of conjectured fears of what might happen. Little factual evidence is produced to support such claims. On the other hand, little factual support is offered by the opponents of this Canon to show that the fears are unfounded. Some journalists will even concede that television adds to the already existent "psychological discomfort."[29]

Judge Justin Miller, supporting the broadcasters' position, said the distraction of a witness in giving his testimony or of a juror is a relative matter. Numerous other incidents taking place in the courtroom may also be equally distracting. For example, "Restrictions imposed by rules of evidence, reprimands administered by the judge, searching cross-examination, the scrutiny of jurors and of the courtroom audience may all be very distracting."[30] Miller continued that compared with the normal inherent tension as a result of

courtroom procedure, the distraction caused by broadcasting performed under proper conditions, would be infinitesimal.[31]

Furthermore, Colorado Supreme Court Justice O. Otto Moore said in regard to the effects of regular televised trials on witnesses, jurors, and other courtroom participants:

> Not one judge, not one witness, not one juror, not one district attorney, not one lawyer, appearing in any of these cases has suggested that his visual reporting of the courtroom proceedings has in any degree whatever interfered with the search for the truth, or the ability of judge, juror, witness, or attorney to function properly.[32]

Moreover, two years later, Chief Justice Edward C. Day of the Colorado Supreme Court confirmed the conclusions of his colleague:

> We believe the Colorado system has actually proved in practice that the things contained in the ABA Canon 35 are founded on mere suspicion and conjecture. . . . Countless witnesses and judges can attest to the fact that broadcasting does not have a psychological effect on witnesses or divert anyone--judge or jury--from the proper purpose of a trial.[33]

Minnesota State Supreme Court Justice Walter Rogosheske gave some hope to the broadcasters by indicating that although he is fearful of the effect television would have on the trial participants, "If. . . [it] becomes commonplace in the courtroom this problem might evaporate."[34] Telford Taylor also expressed a similar view that it would not be too much to request the witness to accommodate himself to the microphones which have become a part of the furniture in most public assembly rooms.[35]

Almost all of the testimony above concerning the

psychological effect of television on trial participants is primarily conjecture or opinion based on little or no factual data. Perhaps the statements by Justices Moore and Day are the closest thing to evidence based on some factual data rather than mere opinion. However, Dr. Grant Y. Kenyon, a psychologist at the University of Wichita, has said that although he knows of no reliable data testifying to the fact that the presence of recording or televising equipment inhibits a witness and causes him to be reluctant about giving testimony, "Anyone who makes a statement pro or con regarding 'psychological effects' must either produce unbiased data or admit ignorance as we do."[36] Although Kenyon's letter was written in 1958, the writer of this current essay has not found any factual experimental evidence which either confirms or rejects the hypothesis that televised trials produce psychological effects on judicial proceedings which inhibit a fair trial. Since Canon 35 is the current policy accepted by most courts, the broadcasters seem to have the burden of proof to present evidence to the contrary concerning this particular objection to telecasting trials.

A fourth objection to the use of electronic journalism tools in judicial proceedings is that--

4. Radio and television distort the true picture of facts for specific cases and create misconceptions about the judicial method by showing only selected portions of a trial.

Herman S. Merrill, former President of the North Carolina

Bar Association, convincingly presents the lawyers' point-of-view on this criticism of televised trials:

> . . . The greater danger [of allowing television-radio broadcasting] arises from the fact that judicial proceedings are designed to achieve justice after a full and complete hearing of all the evidence on both sides. Time limitations and public interest would limit the news media to the sensational portions of any trial being conducted. Unfortunately, such publicity can create false impressions in the minds of the public. . . . The risk of unjust results, influenced by incomplete information, appears to me to outweigh any benefits the public might derive from hearing bits of evidence, out of context, and supporting only the portion of the side to the litigation which happens to be introducing evidence at the particular time.[37]

Chief Justice Warren adds another problem to televising trials by asserting that it "diverts the trial from its proper purpose. . . [and] gives the public the wrong impression of the purpose of trials . . ."[38]

In addition to the possible distortion of a trial by the broadcasters themselves, it is feared that such proceedings will often be viewed by the public only intermittently in a hit or miss manner and that misconceptions of the trial will be created and perhaps even magnified.[39]

Professor Brod counters the distortion criticism in the following manner:

> Any reporting requires the omission of some material. A reporter seldom presents everything he knows. But distortion beyond a minimal level would likely come only through design or incompetence, not through any intrinsic characteristic of a particular news medium.[40]

Some broadcasters even point out that television is a

more accurate means of reporting the news than is the newspaper or magazine reporter.[41] The broadcasters could, likewise, indicate that readers of the daily newspaper might read or follow the daily events of a trial in a hit or miss manner and thereby receive a different picture than the individual who follows the daily events closely. Hence, if the logic of the Canon 35 advocates is followed to its extreme, public trials and the right of the public to know would be greatly curtailed or eliminated.

The above four reasons, implied in the wording of the Canon, have been traditionally used to bar radio and television from judicial proceedings. The American Bar Association has, in recent years, advanced additional arguments to bolster their defense of the controversial Canon. Some of these newer criticisms are as follows:

5. The presence of cameras might encourage some judges, lawyers, and other trial participants to perform for the larger viewing audience rather than for their clients.

Most of the Canon 35 supporters express fears of a "show-off" judge or lawyer degrading the court. For example, Erwin N. Griswold, Dean of Harvard University Law School, indicates that some lawyers will undoubtedly "ham it up" and turn the courtroom into something resembling a theater.[42] Likewise, Justice Douglas points out that some may use television to seek publicity by clowning.[43]

The broadcasters do not dispute that there may be

show-offs in the courtroom, but as Joseph Costa, Chairman of the Board of Directors of the National Press Photographers ›ciation, commented, "A lawyer or a judge who is a show-off remains that whether a camera is present or not."[44] In fact this seems to be the case with Melvin Belli who was quite a showman before television cameras in the Jack Ruby trial as well as other trials without the camera present.[45]

John Charles Daly effectively replies to the Canon 35 advocates by stating:

> Perhaps there is fear that some of your members will misbehave--and disgrace you. There are ways of discouraging this within your own profession, don't penalize us.[46]

Another fact which the broadcasters use is that Judicial Canon 34 expressly prohibits hamming and clowning in the courtroom. All that needs to be done to alleviate the fears of those who want to ban cameras from the courtroom because of show-offs is to enforce Canon 34.

Jeremy Bentham also made a philosophically defensible statement about the beneficial effect of the public eye upon the judge:

> Upon his moral faculties, it acts as a check, restraining him from active partiality and improbity in every shape. Upon his intellectual faculties, it acts as a spur, urging him to that habit of unremitting exertion without which his attention can never be kept up to the pitch of his duty. Without any addition to the mass of delay, vexation, and expense, it keeps the judge himself--while trying--under trial.[47]

The broadcasters seemingly stand on firm ground in their refutation of the argument that the tendency of some toward

performing before an audience should be grounds for barring television from the courtroom.

6. Commercial sponsors might control, sensationalize, or vulgarize judicial proceedings if televised trials were permitted.

Justice Douglas is one influential individual who fears that commercial advertisers of courtroom broadcasts would "cheapen" and "vulgarize" the process of government.[48] John Humphrey, Jr., Assistant District Attorney for Fort Sumner, New Mexico, claims that lawyers are worried about court programs such as "Criminal Trial of the Week" or "Rape Trial of the Week" replacing Peyton Place or the Tonight Show.[49]

Zimmerman and Kaechele, who generally favor equal access of electronic journalism to the courtroom, conclude:

> While there is no factual evidence to support the fears that such sponsorship will lead to control, the damage that could be done by unwarranted commercial influence is too great to take the chance. If the broadcasts are to be made, then another source should be found to finance them.[50]

Some broadcasters have offered to guarantee against the above fears by establishing codes. Others have, in certain cases when allowed to televise a trial, cancelled commercials during courtroom proceedings.[51]

7. The media could add unwarranted burdens especially on an elected judge by exerting pressure to permit cameras in the court and by the necessity to police the activities of the media while in the courtroom.

Superior Court Judge Henry S. Stevens of Phoenix, Arizona, says:

> Woe be unto that judge who has sufficient courage to exclude photography in a celebrated case. I venture to say he will not be dealt with in a kindly manner by the press. I know from bitter experience that disfavor with the press can be a pretty rough ordeal.[52]

Moreover, a decision handed down by a New York Superior Court established that,

> No trial judge, mindful of his lawful duties and responsibilities, would willingly place himself in the position of censor. Certainly no trial judge should be expected to interrupt the orderly trial of a case before him to ascertain whether the jurors or witnesses object to having their photographs taken, or to ascertain whether witnesses object to having their testimony broadcast.
>
> In short, no judge should be called upon to deviate in any manner from the proper discharge of his proper functions as a judge, responsible to the people for the administration of justice according to law.[53]

In reply to the above charges, Brucker states that television is not the heart of the trouble, but the imperfections are in the various state judicial systems which allow judges to be subject to political and public pressure. "Why," he says, "take it out on journalism, whose reporting of events to the citizens makes a self-governing society possible?"[54]

However, Professor Brod recommends that a committee of local judges determine the suitability of a case for televising coverage, thereby taking the decision out of any individual judge's hands.[55] Moreover, the broadcasters have shown a willingness to enforce a code of conduct on their members while operating in a courtroom.

8. The possible damage to a defendant's mental processes due to the impact of a televised trial is unwarranted.

As Justice Clark comments concerning the presence of courtroom television, ". . . /It/ is a form of mental--if not physical--harassment, resembling a police line-up or the third degree."[56] "Therefore," he later concludes, "trial by television is . . . foreign to our system."

However, Brucker replied to this specific argument by saying that Clark needs to prove his ex-cathedra pronouncement which is an unsupported assertion.[57]

Arguments Opposing Canon 35

Although the broadcasters have responded to the arguments presented by the American Bar Association, through rebuttal, they have also acted in an offensive manner by advancing independent arguments establishing reasons for televised trials. The media's case for cameras in the courtroom is usually summed up in a trinity of arguments, separate yet intermingled, and one subordinate argument:

1. Broadcasting court proceedings serves the vital role of making the hearings truly a public trial. The distrust of judicial secrecy in the United States has evolved from the knowledge of such notorious proceedings as the Spanish Inquisition, the English Star Chamber Court, and the French lettre de cachet abuse.[58] For this and other reasons, the Sixth Amendment to the United States Constitution was probably added guaranteeing, "In all criminal prosecutions, the accused shall

enjoy the right to a speedy and public trial. . . ."

Although there is little doubt that the right of a public trial in criminal cases belongs to the accused, some question exists as to whether the right belongs only to the accused or to society as well. If this right is the property of society, then its presence in the courtroom cannot be entirely denied. Using this argument as their premise, Zimmerman and Kaechele draw the following three advantages of a public trial in working to safeguard democracy:

1. The presence of the public would prevent star chamber proceedings and insure the accused of a fair trial.
2. A public trial permits society to keep a careful eye on those public officials elected or appointed to dispense justice.
3. A public trial would afford the people an opportunity to gain a better understanding of how their government operates.[59]

If, on the other hand, the right to a public trial belongs to the accused only, as some claim,[60] and he chooses to waive his right to a public trial, then the alleged need to have the public or its information seeking media present is also waived.

Although no court ruling has stated that because a defendant may waive his right to a public trial he has the right to a private trial,[61] the United States Supreme Court did recognize society's right to demand public trials of accused individuals:

> A trial is a public event. What transpires in the courtroom is public property . . . those who see and hear what transpires can report it

> with impunity. There is no special prerequisite of the judiciary which enables it, as distinguished from other institutions of democratic government to suppress, edit or censor events which transpire in proceedings before it.[62]

In developing the case for the broadcasters, the National Association of Broadcasters states, "Cameras and microphones are the most effective means yet devised to transmit simultaneously the sight and sound of court trials. . ."[64] Implied in these above arguments are the assumptions that the public has a right to be informed about public events which could influence their lives, that television is protected under freedom of the press to cover judicial proceedings, and that television serves an informative and educational function about judicial processes.

However, the American Bar Association presents an interesting counter-attack to the broadcasters' argument:

> It is beyond argument that . . . the courtroom must at all times be open to the public, including the representatives of all established media of communications. A trial is no less public because of the exclusion of cameras, microphones and similar devices. . . /This/ exclusion . . . has not made trials one whit less public than they were a century ago.[64]

Likewise, it has been argued that the exclusion of only electronic journalism does not make a trial secret or closed.[65]

2. Barring television from trials would infringe upon the public's right to know about the administration of justice by reducing the accessibility of the most advanced communication system. Since the people are entitled to information

about the judicial processes which may ultimately affect the rights of all people, it is the responsibility of the broadcasters and the government to take advantage of the technical advances of electronic journalism to furnish this information most effectively and efficiently. Besides, television is a dynamic transmission facility which has been keeping the public well informed in all other areas of public life. Consequently, the electronic journalists should be facilitated not impeded in performing their reporting task of judicial proceedings news.[66]

Advocates of Canon 35 point out that the public has ample opportunity to discover whether or not justice is being served. Besides, television can make the same reports as the newspaper reporter.

3. The blanket banning of cameras from the courtroom is a denial of freedom of the press. Since radio and television are protected by the First Amendment[67] and since the United States Supreme Court said, "The First Amendment draws no distinction between various methods of communicating ideas,"[68] it is claimed that electronic journalism is unfairly discriminated against and unduly restricted by governmental control.

The broadcasters, however, are quick to admit that their presence may at times create disturbances which should not be allowed in a courtroom. Yet they claim that this does not justify a blanket rule excluding broadcasting equipment from all trials.[69] It is for this reason that television reporters

are willing to allow each judge to decide on a case-by-case basis whether or not to allow television coverage. The advocates of Canon 35 point out that electronic journalists have the same rights as all other journalists--to be present, to observe, and to take notes. They argue that the refusal to admit the television reporter's equipment is no more discriminatory than to bar the newspaper and magazine reporter's printing press or typewriter.[70]

Furthermore Richard P. Tinkham states,

> No one is barred from any courtroom. The complaint is that they /the broadcasters/ can't gather the news in the ways they prefer--with cameras and microphones. The media do not seek access to information. They have that. They want something more. It might be called 'freedom of the lens and microphone.'[71]

While the opponents of Canon 35 emphasize the above three arguments as their independent defensive attack, they also advance another argument, but with less stress placed on it.

4. Broadcasting in the courtroom can serve the function of educating the public in judicial matters so that they can better perform their duties as citizens. As Judge Van Meter said, after he allowed WKY-TV, Oklahoma City, to cover the Billy Manley murder trial in December of 1953,

> If television is used in an educational and factual manner as it was in this case, without any of the spectacular portrayal, it should be very helpful. There is no question in my mind but what there is a need for people generally to know more of their courts in action. Many people rarely have any contact with the court. Too often what is said

> or shown about courts is not a true portrayal. If television can present courts as they actually function, this should be a real public service.[72]

Supporting Judge Van Meter's views, Fred Rodell, former Professor at Yale Law School and author of Nine Men, states:

> There can be no doubt that the public would benefit from a more realistic and hence more instructive picture of their courts in action than they currently get from the contrived contretemps encountered weekly by Perry Mason and the Defenders.[73]

One of Robert S. Redmount's criticisms of the American jury system is that the prospective juror is too often almost totally ignorant or grossly misinformed as to the character and function of generally known legal processes and legal personnel.[74] Through televised trials, the public can become more familiar with their surroundings and, therefore, hopefully perform their duties as citizens.

Skeptics of the broadcasters' true motives ask the question: Would the projected programs do much more than present those features of trials having to do with sensational facts? or Would there not, thus, be little more than a partial or one-sided picture of court procedure, leaving the public still uninformed as to the basic judicial role and its importance to the rights of people under the Constitution?[75]

Judge Barbeau also challenged television journalists to prove their claim that television is motivated by a desire to educate its viewers on legal problems and procedures.[76] Zimmerman and Kaechele also believe that televised trials need a greater justification than the guise of providing the

public with an education about the judiciary.[77]

In addition to the specific rebuttals directed against the broadcasters' independent arguments for the repeal of Canon 35, the American Bar Association has more recently offered two general refutations:

First, they claim that telecasted trials impede the progress of searching for truth and, therefore, interfere with the defendant's right of a fair trial.[78] Furthermore, they say they are cognizant of the press' right to obtain and report news, but that that value should not have a priority over the defendant's right to a fair trial.

In fact in 1965 the United States Supreme Court reversed a conviction of Billie Sol Estes by a Texas Court on the grounds that his trial had not been fair because it had been televised. Although the decision was 5 to 4, five of the nine justices held that under some circumstances it might be possible to televise a trial without harm.[79] Hence, Brucker says that although this case is a set-back for the hopes of the broadcasters, it may also be a break for television since a majority of the Supreme Court does not accept at least part of the Canon 35 code of judicial ethics.[80]

A decision by the Oklahoma Court of Criminal Appeals also provided additional hope when it affirmed a lower-court conviction in 1958 and denied that the defendant's rights had been violated by television. The court concluded: We are of the opinion the matter of televising or not televising. . .

criminal trials and proceedings . . . is within the sound discretion of the trial judge."[81] Moreover, in 1961 this same court reiterated its ruling concerning television in the courtroom.[82]

Regarding the matter of television impeding the search for truth because of the widespread public nature of a trial, the media cite legal philosophers such as Sir William Blackstone, who commented on the whole matter of public trials by saying:

> This open examination of a witness, in the presence of all mankind, is much more conducive to the clearing up of truth than the private and secret examination taken down in writing before an officer. A witness may frequently depose that, in private, which he would be ashamed to . . . in public.[83]

Likewise, Jeremy Bentham is even more specific about the relationship of truth and the public trials:

> In many cases, say rather in most, the publicity of the examination operates as a check upon their /the witnesses/ mendacity and incorrectness. Environed, as he sees himself, by the thousand eyes, contradiction, should he hazard a false tale, will seem ready to rise up in opposition to him from a thousand tongues; many a known face, every unknown one, presents to him a possible source of detection, from whence the truth he is struggling to suppress may, through some unsuspected channel, be brought forth to his confusion.[84]

The second general refutation which the American Bar Association employs against the independent arguments advanced to refute Canon 35 is the claim that a televised trial will infringe upon an individual's right of privacy.[85] The doctrine of right of privacy is a relatively new legal concept but recognized by the courts. However, controversy

exists as to where the individual's rights of privacy end and society's right to know begins.

Although the right of privacy and the right of the public to know is not clearly defined for all trial participants, it seems evident that the news media has the right to cover fully prosecutor or plaintiff and defendant's testimony, for several courts have ruled in favor of the media's right to gather and report news.[87] However, the question of privacy for voluntary and subpoenaed witnesses is not clear. The Colorado courts have given this right only to subpoenaed witnesses, while the Texas courts give the right to all witnesses if they so desire it and express this desire.[88] On the other hand, Judge Blashfield indicates his belief that any person who enters the courtroom forfeits his right of privacy,

> A court is a public institution. Trials and other proceedings in court are public business because they are important governmental functions. The courtroom is public property. When a person enters a courtroom, whether to participate or to observe, and whether in response to process or other court order, the protection of his privacy legally ceases to the extent of reporting such proceedings but not for any other purpose.[89]

Nevertheless, advocates of Canon 35 state that until broadcasters can,

> supply concrete evidence that they can report criminal trials in such a way that no one's reputation is unnecessarily tarnished, lawyers and judges will be unwilling to grant access to the courtroom to radio and television.[90]

The media presented counter-evidence to the above statement by pointing out that although a "cost" factor is involved in an open jurisprudence society, citizens of a democracy believe that the public nature of a trial has a value that outweighs the sacrifice of an individual's privacy, namely, the value of preventing Star Chamber tyrannies. Hence, the broadcasters claim that controlled televising of legal proceedings serves to guarantee and enlarge these benefits to society.[91]

RECAPITULATION OF CANON 35 ARGUMENTS

Although the above may not completely exhaust all of the arguments used to support and oppose Canon 35, this writer feels that most of the arguments cited in the current literature are represented. In addition to merely identifying the various arguments and refutations made concerning equal access, a necessity exists to evaluate the merits of the various arguments. Hence, a sifting process is required to separate the strongest, the weakest, and the questionable (the issues which need further research or a United States Supreme Court decision), arguments advanced by both sides. This writer, then, will generally consider the strongest arguments to have some merit, while the weakest arguments will usually be without merit. The questionable issues will have some merit in that they need to be objectively or authoritatively evaluated.

For the convenience of the reader, Table 1 presents the categorization of arguments.

For the most part this writer will avoid repetitious comments about each argument listed in Table 1 and will refer the reader to the discussion of the issues in the above text. However, S_7 listed under "Strongest," has some weaknesses because as previously pointed out the heart of the trouble may actually be in the imperfections of the judicial system of electing some judges rather than with the broadcasters themselves. Moreover, O_1 and O_2 listed under "Questionable," have some strengths because there is definite recognized merit to encouraging public trials and to informing the public about the administration of justice.

It is this writer's opinion, as well as others,[92] that in addition to the higher level discussion which has gone on concerning Canon 35, underlying motives are involved which need to be dealt with before any major revision of Canon 35 can be made.

Evidence of such underlying motives is apparent when one considers that almost every argument employed against televised judicial proceedings lacks validity as applied to appellate, supreme court, and some other court proceedings such as injunctions. In the above proceedings there are no jurors or witnesses to be pressured by public opinion or to be made nervous. Lawyers, arguing legal points to a bench of judges, (as well as the judges themselves) would find it

TABLE I

Categorization of Current Arguments Regarding Canon 35

STRONGEST	WEAKEST	QUESTIONABLE
S_6	S_1	S_3
S_7 (also some weaknesses)	S_2	S_8
	S_4	
O_3	S_5	R_1
		R_2
	O_4	
		O_1 (also some strengths)
		O_2 (also some strengths)

KEY:

Arguments Supporting Canon 35
(S=Supporting, R=Refutation of Opposing Arguments)

S_1 TV detracts from dignity of court, supra., pp. 3-4
S_2 Physical presence of TV disrupts decorum of court, supra., pp. 4-6.
S_3 TV introduces psychological effects on trial participants, supra., pp. 6-9.
S_4 TV distorts true picture of a trial, supra., pp. 9-11.
S_5 TV encourages trial participants to perform, supra., pp. 11-12.
S_6 Commercial advertising of trials vulgarizes proceedings, supra., pp. 12-13.
S_7 TV exerts unwarranted pressures on judge, supra., pp. 13-14.
S_8 TV damages defendant's mental processes, supra., p. 14.
R_1 TV hinders search for truth and fair trial, supra., pp. 20-22.
R_2 TV infringes upon right of privacy, supra., pp. 22-23.

Arguments Opposing Canon 35
(O=Opposing)

O_1 TV serves role of making trial truly public, supra., pp. 15-17.
O_2 Banning TV from courts infringes upon right to know, supra., p. 17.
O_3 Banning TV from courts denies freedom of the press, supra., pp. 17-19.
O_4 TV in courts serves an educational function, supra., pp. 19-20.

quite inadvisable to act before an audience. Yet the prohibition against electronic journalism exists as a blanket rule even under the above conditions.[93] In fact Chief Justice Warren denied a CBS request to televise selected proceedings of the United States Supreme Court.[94]

Perhaps, Justice Douglas' comment would help to explain the American Bar Association's stand on Canon 35 as a blanket rule, "The camel [the broadcasters with their modern electronic equipment] should be kept out of the tent, lest he take it over completely."[95]

Another underlying factor is the legal field's concern that newspaper reporting may influence trial participants and make a fair trial more difficult.[96] Fear also exists that televised court proceedings will only serve to heighten this problem of prejudicial trial publicity.[97] The American Bar Association is, therefore, reluctant to allow television in the courtroom.

PROSPECTS

During the past twenty years, the broadcasters have made some encouraging challenges against Canon 35. The brightest hope has of course been in Colorado where stations have been permitted to broadcast trials since the 1956 murder trial of John Gilbert Graham. In reference to the eight years of such televised trials, Justice Moore says:

> We have had a long and very satisfying experience in the courts of Colorado where cameras and sound equipment are permitted under regulations which have proven fully adequate to guard against any legitimate objection to their use.[98]

Other progress has been made with televised trials in Oklahoma in the 1953 Billy Manley murder trial, and in Texas with the 1955 Washburn case.[99]

Although some headway was made by the broadcasters, the lawyers have, for the most part, held firm ground in keeping Canon 35 effective. For example, the strict statewide broadcasting bans on judicial proceedings such as those of Ohio and Wisconsin seem to be more prevalent.[100] The Estes Supreme Court decision is likely to have an even more serious deterent on trial judges permitting electronic journalism equipment in the courtrooms. This cautiousness by judges is also likely since few judges enjoy having their decisions reversed by a higher court.

It seems that the Canon 35 debate must continue to be resolved in a courtroom-by-courtroom, judge-by-judge manner. However, the broadcasters are unlikely to make substantial gains by continuing with their present strategy of debating philosophically with a lack of research to substantiate their claims.

RECOMMENDATIONS

This writer will offer what he believes to be the most successful strategy for the broadcasters to take in the future.

Mutual cooperation between the media and the lawyers in conducting experimental studies dealing with the questionable issues mentioned above will be the first prerequisite to success. The American Bar Association should readily accept such an offer by the broadcasters, for in 1956 they admonished the media in an editorial:

> If any change is to be made in Canon 35 in the future it will only be because of intelligent dispassionate persuasion supported by statistics, by further experiments in actual courtroom tests, and by mutual co-operation between the broadcasters, the Bench and the Bar.[101]

Again in 1958, Tinkham, for the American Bar Association committee studying the Canon 35 question, recommended having an impartial agency investigating the three questions of fact involved:

> (1) Whether broadcasting imposes undue burdens upon the trial judge
> (2) Whether it has an adverse psychological effect upon trial participants
> (3) Whether partial broadcasts influence trial results.[102]

Specific Recommendations

The restrictions of Canon 35 against the broadcasters should be set aside in three progressive steps over a six year experimental period to allow electronic journalism to cover trials and hearings with permission and under the control of the judge or committee concerned.

During the first two year step, supreme court, appellate court, and other non-trial judicial proceedings would be permitted and encouraged to be televised.[103] During the second

two year period, the ban against televised non-criminal trials would be lifted,[104] while all cases would be open to possible telecasting during the third second year step.

A committee of broadcasters, lawyers, and judges should decide the balance of different types and the number of trials or hearings to be televised under each two year step. As to specific hearings or trials involved, each one would have to be judged on the basis of the case involved.

During the last four years of the experimental period, experimental tests should be conducted by independent agencies to determine whether televised trials introduce unwarranted psychological effects on trial participants, whether partial broadcasts influence trial results, whether television damages a defendant's mental processes, and whether television hinders the search for truth and for a fair trial. As the results of the research become available, modifications could be made in the trial or in the telecasting to make it less of a problem to the court. In addition, the media itself should be studied to determine how they conduct themselves when they receive or are denied permission to televise certain proceedings. Studies of other issues could also be made as their importance emerged.

Besides the experimental research dealing specifically with the questionable arguments,[105] the broadcasters would be wise to have individuals in the media's behalf initiate test cases in either Colorado or Texas that could be taken to the United States Supreme Court. For example, it is probably

necessary for the Supreme Court to decide some issues such as Does telecasting necessarily preclude the opportunity for a fair trial? Does telecasting a trial infringe upon the right of privacy of trial participants? and Does television serve the role of truly making a trial public?

To relieve the possible pressure which the media might exert on elected judges to allow telecasting of proceedings, a committee of local judges should make the decision as to whether a case is to be televised or not.[106] Moreover, commercial sponsorship should be absent during the judicial proceedings.[107] Other recommendations which should be followed during this six year experimental period are that the presiding judge in a televised court should have a cut-off switch at his bench in the event that he might wish to interrupt the transmission and that broadcasters should pool their resources, operators, and coverage so that only one set of equipment is installed in the courtroom.

Zimmerman and Kaechele indicate that the experimental research involved in such a test could be financed by the American Bar Association, the National Association of Broadcasters, the National Press Photographers Association, and possibly a governmental grant.[108]

At the conclusion of the six year period the bar and the broadcasters would hold a conference to hear the results of the study and to consider any Supreme Court decisions handed down. From the information gathered in the experimental

studies and by the evaluation of the research people, the bar-broadcasting committee could then attempt to draw up an adequate agreement based on factual material. A time limit of nine months would be placed on the committee in order to expedite matters.

In the event that the committee's final recommendations provide for broadcasting judicial proceedings, a system of financing the costs would be needed if commercial advertising was prohibited in regards to the judicial telecasting. Such a system might be in the order of a special private foundation set up as described by Zimmerman and Kaechele[109] or in the order of government supported educational television as suggested by McLaughlin and Driman.[110]

With the above recommendations followed, two of the strongest Canon 35 arguments, S_6 (advertising) and S_7 (pressure on judge) would no longer be valid for any judicial proceedings. Furthermore, many of the questionable issues could also probably be resolved in favor of the broadcasters, leaving little reason for Canon 35 to remain as a "blanket rule" in prohibiting broadcasts. Instead a revised Canon 35 should be necessary only for special trials as the judicial committees might see fit.

FOOTNOTES

[1]Donald F. Brod, Associate Professor of Journalism, Wisconsin State College, (untitled mimeographed paper, 1966), p. 21.

[2]Majority opinion as delivered by Supreme Court Justice Clark in Estes v. State of Texas, 85 S. Ct. 1628 (1965).

[3]American Bar Association (ed.), Canons of Professional Ethics and Canons of Judicial Ethics. (St. Paul: West Publishing Co., 1963), p. 59; John M. Kittross and Kenneth Harwood, "Introduction," Free & Fair: Courtroom Access and the Fairness Doctrine. (Philadelphia: Association for Professional Broadcasting Education, 1970), pp. 1-7.

[4]Steven H. Zimmerman and Edward H. Kaechele, "A Study of the Question of Equal Access as It applies to the Courts and Legislative Bodies," (unpublished Master's thesis, Boston University, 1959), pp. 68-81; Frank Thayer, Legal Control of the Press, (3rd ed., New York: The Foundation Press, Inc., 1956), pp. 27-39.

[5]George Waller, Kidnap: The Story of the Lindbergh Case. (New York: Dial Press, 1961), passim.

[6]Zimmerman and Kaechele, pp. 18-27.

[7]Ibid.; Kenneth D. Frandsen and James G. Backes, "Canon-Thirty-Five: Televising Courtroom Proceedings," Quarterly Journal of Speech, 49 (December, 1963), 389.

[8]Cannons of Professional Ethics, p. 59.

[9]Maynard E. Pirsig, Cases and Materials on Professional Responsibility. (St. Paul: West Publishing Co., 1965), p. 265.

[10]Ibid., p. 264; Herbert Brucker, "A Crack in Canon 35," Saturday Review, 48 (July 10, 1965), p. 48.

[11]This author found that the opponents often used a variety of arguments to support their stand even though conditions had changed resulting in nullification of these arguments as valid or relevant. Hence, some arguments were used to keep the debate going on a number of issues even at the risk of repeating themselves on dead issues.

[12]Cannons of Professional Ethics, p. 59; Sherman P. Lawton, "Who's Next: The Retreat of Canon 35," Journal of Broadcasting, 2 (Fall, 1958), 289.

[13]Estes v. State of Texas, 85 S. Ct. 1628 (1965).

[14]Robert N. Wilkin, "Judicial Canon 35 Should Not be Changed," American Bar Association Journal, 48 (June, 1963), 541.

[15]Justice William O. Douglas, "The Public Trial and the Free Press," Publishing Entertainment Advertising Law Quarterly, 2 (June, 1962), 65.

[16]Estes v. State of Texas; also see Erwin N. Griswold, "The Standards of the Legal Profession--Canon-35 Should Not be Surrendered," American Bar Association Journal, 48 (July, 1962), 616; Jim Parsons, "Legal Profession, Radio-TV Debate Airing of Trials," Minneapolis Tribune, June 22, 1966, p. 15.

[17]Brucker, p. 49; Harold W. Sullivan, "Court Record by Video-Tape Experiment--A Success," New York State Bar Journal, 41 (December, 1969), 697.

[18]Associate Justice Frank H. Hull, "Colorado's Six Years' Experience Without Judicial Canon-35," American Bar Association Journal, 48 (December, 1962), 1121.

[19]Wilkin, pp. 540-41; Griswold, pp. 615-18.

[20]Robert Sarnoff, "Address Before the Detroit Economic Club," Television Journalism: The Shackled Giant, (December, 1964), 12.

[21]Zimmerman and Kaechele, p. 201.

[22]American Bar Association (ed.), Judicial Canon 35 Conduct of Court Proceedings, 1958, p. 7.

[23]Gerald Cashman and Marlowe Froke, "Cannon-35 as Viewed by the Illinois Judiciary," Journal of Broadcasting, 2 (Fall, 1958), 297.

[24]Ibid., p. 12; Albert E. Blashfield, "The Case of the Controversial Canon," American Bar Association Journal, 48 (May, 1962), 429; "We Find Her Guilty," Newsweek, 53 (April 27, 1959), p. 34; "KWTX-TV Covers Murder Trial Live, Sets Precedent in Courtroom Access," Broadcasting-Telecasting, 49 (December 12, 1955), 80;"Denver Court Test Shows Radio-TV New Capabilities," Broadcasting-Telecasting, 50 (February 13, 1956), 31, 92.

[25]Max K. Lerner, "Limitations Imposed on Television and Radio: A Problem that Needs Immediate Attention," American Bar Association Journal, 39 (July, 1953), 569; also see "Courtroom Television," Texas Bar Journal, 19 (February, 1956), 109.

[26]Cashman and Froke, p. 295; John A. Sutro, "A Lawyer's View of Courtroom Broadcasting," Journal of Broadcasting, 12 (Winter, 1967-68), 19-22.

[27]Zimmerman and Kaechele, p. 140; Sullivan, p. 697; Alan E. Morrill, "Enter--The Video Tape Trial," The John Marshall Journal of Practice and Procedure, 3 (1970), 245.

[28]Paul J. Yesawich, Jr., "Televising and Broadcasting Trials," Cornell Law Quarterly, 37 (Summer, 1952), 701-17; Jack Gould, New York Times, (March 11, 1956), p. 11, Sec. 2; Werner K. Hartenberger, "After Estes, What . . . ?" Journal of Broadcasting, 12 (Winter, 1967-68), 43-55.

[29]Jerry Walker, "Electronic Journalism Debate in Enlightening," Editor & Publisher, 84 (June 23, 1951), 55; also see Telford Taylor, "The Issue is Not TV But Fair Play," New York Times Magazine, (April 15, 1951), p. 67.

[30]Justin Miller, "Should Canon 35 be Amended? A Question of Fair Trial and Free Information," American Bar Association Journal, 42 (September, 1956), 335.

[31]Ibid.

[32]O. Otto Moore, "Television Court Trials," Rotarian, 92 (February, 1958), p. 51.

[33]John McLaughlin and Robert F. Driman, "Television in the Courtroom?" America, 112 (January 16, 1965), p. 74.

[34]Parsons, p. 15.

[35]Taylor.

[36]A letter from Grant Y. Kenyon, Ph.D., Psychology Department University of Wichita to Mr. C. M. Morris of the Morris & Bailey Law Firm in Wichita, Kansas, June 9, 1958, cited in Zimmerman and Kaechele, p. 141.

[37]Annual Report of the American Bar Association, 86 (1962), p. 764; Joseph L. Brechner, "News Media and the Courts," Journal of Broadcasting, 12 (Winter, 1967-68), 3-17.

[38]Brucker, pp. 48-9.

[39]Yesawich, p. 710.

[40]Brod, p. 15.

[41]"The Congress and TV," Broadcasting-Telecasting, 40 (April 16, 1951), 139.

[42]Griswold, p. 617.

[43]Douglas, Law Quarterly, p. 62.

[44]Annual Report, p. 755.

[45]Fred Rodell, "TV or No TV in Court," New York Times Magazine, (April 12, 1964), p. 16.

[46]Annual Report, p. 786.

[47]John Charles Daly, "Ensuing Fair Trials and a Free Press: A Task for the Press and the Bar Alike," American Bar Association Journal, 50 (November, 1964), 1041.

[48]Douglas, Law Quarterly, p. 64.

[49]John Humphrey, Jr., "Letter to Editor," Saturday Review, (August 14, 1965), p. 51.

[50]Zimmerman and Kaechele, pp. 204-05.

[51]KWTX-TV Covers Murder Trial, p. 79.

[52]Annual Report, p. 766; also see pp. 767-68.

[53]United Press Association v. Valante, 113 N.E. 2nd 777(1954).

[54]Brucker, p. 49.

[55]Brod, p. 16.

[56]Brucker, p. 48.

[57]Ibid.

[58]In re Oliver, 333 U.S. 257 (1948).

[59]Zimmerman and Kaechele, p. 6.

[60]Yesawich, pp. 704-05; Wilkin, pp. 540-41; Griswold, pp. 615-18.

[61]Donald Oresman, "Newspaper Cameras and the Courtroom," University of Pittsburgh Law Review, 18 (Fall, 1956), 51.

[62]Craig v. Harney, 331 U.S. 367 (1947).

[63]Broadcasting Public Proceedings (New York: National Association of Broadcasters, 1962), p. 4.

[64]American Bar Association, Judicial Canon, (1958), pp. 54-55; "Instant Replays," The Wall Street Journal, (December 3, 1971).

[65]Douglas, Law Quarterly, p. 59.

[66]John Daly, "The News-Broadcasting's First Responsibility," Address given before the American Bar Association, New York, July 15, 1957, cited in Zimmerman and Kaechele, p. 15; Howard H. Bell, "Trial and Error," Address given before Virginia Association of Broadcasters, Richmond, Virginia, June 5, 1957, cited in Zimmerman and Kaechele, p. 14.

[67]Burotyn v. Wilson, 343 U.S. 495 (1954); U.S. v. Paramount Pictures, Inc., 334 U.S. 131 (1948).

[68]Superior Films v. Department of Education of Ohio, 346 U.S. 587 (1934).

[69]"In the Matter of Canon 35," Brief of the National Association of Broadcasters, before the House of Delegates of the American Bar Association, February 24, 1953, p. 10.

[70]Brod, p. 18.

[71]Richard P. Tinkham, "Should Canon 35 be Amended? A Question of Proper Judicial Administration," American Bar Association Journal, 42 (September, 1956), 344.

[72]"TV in the Courtroom," Newsweek, 43 (February 8, 1954), p. 75; also see Parsons, p. 15; Daly, "Ensuing Fair Trials," p. 1042.

[73]Rodell, p. 104.

[74]Robert S. Redmount, "Psychological Tests for Selecting Jurors," Kansas City Law Review, 5 (1957), 401.

[75]American Bar Association, Judicial Canon, (1958), p. 17.

[76]Parsons, p. 15.

[77]Zimmerman and Kaechele, pp. 202-03.

[78]Wilkin, p. 540; Lerner, p. 569.

[79]Estes v. State of Texas.

[80]Brucker, p. 48.

[81]Lyles v. State of Oklahoma, 330 P. 2nd 734 (1958).

[82]Cody v. State of Oklahoma, 361 P. 2nd 307 (1961).

[83]Daly, "Ensuing Fair Trials," p. 1041.

[84]Ibid.

[85]Wilkin, p. 541.

[86]Walter B. Emery, Broadcasting and Government Responsibilities and Regulations (East Lansing: Michigan State University Press, 1961), pp. 286-87.

[87]Ibid.; Berg v. Minneapolis Star & Tribune Co. 79f Supp. 957 (1948); In Re Hearings Concerning Canon of Judicial Ethics, Supreme Court of Colorado En Banc, February 27, 1956, 296 P. 2nd 465.

[88]Annual Report, pp. 754, 782.

[89]Blashfield, p. 433.

[90]McLaughlin and Driman, p. 75; also see p. 73.

[91]Ibid., p. 74.

[92]Zimmerman and Kaechele, pp. 200-01.

[93]Rodell, p. 103.

[94]Brucker, p. 49.

[95]Douglas, Law Quarterly, p. 66.

[96]American Bar Association, Judicial Canon (1958), p. 24; Zimmerman and Kaechele, p. 195.

[97]Anthony Lewis, "Cameras in Court?--A Growing Debate," New York Times Magazine, (October 2, 1960), pp. 22, 59, 62.

[98]Annual Report, p. 761.

[99]Lawton, p. 289.

[100]Cashman and Froke, p. 299.

[101]"Canon 35 and the Broadcasters," American Bar Association Journal, 42 (September, 1956), 848-49.

[102]American Bar Association, Judicial Canon, (1958), p. 7; also see Annual Report, p. 749.

[103]Ronald Goldfard, "TV and the Supreme Court," Commonweal, 81 (October 30, 1964), p. 150; Brucker, p. 49; Annual Report, p. 765.

[104]Beatty, p. 58; Lerner, pp. 571, 574; J. M. Ripley, "An Argument for Television in the Civil Courtroom," Journal of Broadcasting, 12 (Winter, 1967-68), 23-31.

[105]Supra, p. 25.

[106]Brod, p. 16.

[107]Robert Lewis Shayton, "The Uses of Diversity," Saturday Review, 47 (June 20, 1964), p. 27; McLaughlin and Driman, p. 74.

[108]Zimmerman and Kaechele, p. 207.

[109]Ibid., pp. 207-08.

[110]McLaughlin and Driman, p. 74.