TIME TO TRIAL (See Page 8)

ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl REPORT

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Cameras in the Courtroom: Pro — Harlan's Prophecy Realized

Few issues have generated as much media heat and as little judicial light as cameras in the courtroom. Until recently, the bar's antipathy to the unblinking eye seemed to grow with cultural acceptance of the technology.[1] The Chief Justice of the United States stalked out of a session of the 1979 ABA meeting because it was being televised. A year earlier, the U.S. Supreme Court cited the "uniquely pervasive" nature of broadcasting as yet another justification for according radio and television second class First Amendment rights.[2]

Durham J. Monsma

Only in January, 1981, did the Supreme Court finally agree to permit the states truly to join the television age by allowing further experimentation with televised court proceedings.[3]

The current ABA ban on courtroom cameras is usually credited to uncontrolled media excesses during the 1935 trial of Bruno Hauptmann for the kidnap and murder of Charles Lindberg's infant son. Not content to adopt committee recommendations that cameras be allowed with the approval of the trial judge, the ABA House of Delegates in 1937 adopted Canon 35, declaring that all photographic and broadcast coverage of courtroom proceedings, both civil and criminal, should be prohibited. The current version, Canon 3A(7) of the Code of Judicial Conduct, basically limits broadcasting or telecasting to administrative or ceremonial occasions. Efforts to revise ABA standards to permit electronic courtroom coverage under local rules and judicial control were rejected by the ABA House of Delegates in 1979.

Mark A. Neubauer

Of late, however, there seems to be a grudging recognition that Cyclops can be tamed. In 1978, with a lone dissenting vote, the Conference of State Chief Justices approved a resolution allowing the highest court of each

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Cameras in the Courtroom: Con — A Personal Perception

My brethren Mark Neubauer and Durham Monsma have written a brilliant summary of the positions usually asserted largely for — and occasionally against — the use of television in the courtroom, as well as the development and current status of the law. That leaves me free to share a personal perception I have long held and fervently believe: Television in the courtroom demeans the judicial process and trivializes justice itself.

Thomas J. McDermott, Jr.

That's not an absolute. Television might be properly and usefully allowed in the courtroom:

If all parties, all witnesses and the Court agree;

If the trial is televised in its entirety;

If representative trials from all phases of civil and criminal litigation are scheduled;

If the presence of cameras has no adverse effect on the person on the witness stand;

If no commentator attempts to analyze the process;

If no advertising interrupts the presentation;

In other words, if all necessary safeguards may be implemented to insure that the judicial process is not exploited as one more time-slot filler.

Or, put bluntly, if a format is adopted that will be absolutely unacceptable to the televiser.

You've read the articles on television in the courtroom and they confirm what you've always known: good journalists and good lawyers can argue either side of a question effectively. So you know that television in the courtroom can be constitutional or unconstitutional, en-

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INSIDE

Book Review: Professor Stolz's 'Judging Judges'

It took me a long time to come to grips with the book, "Judging Judges: The Investigation of Rose Bird and The California Supreme Court," by Preble Stolz. I had read too many reviews, almost all of them concentrating on Professor Stolz's motives. One review called the book a "hatchet job," accusing Stolz of writing it out of pique at not having been appointed to a sought-after judicial office. Another accused Stolz of having a long-standing grudge against Chief Justice Rose Bird, who at one time apparently worked in a subordinate position to him.

Much of the subjective tone of these reveiws is invited by the author's own introduction. Stolz admits that he "passes judgment with alarming frequency on nearly all the participants in the events described" and goes on to describe his own background as the son of a newspaperman and his sometime contacts with Governor Jerry Brown and Rose Bird.

Nevertheless, after reading the book I concluded that it is what it seems to be — an attempt to describe an episode in California legal history: the 1979 investigation of the California Supreme Court by the Commission on Judicial Performance. The probe was prompted by a Los Angeles Times story reporting allegations that the Court had delayed releasing a controversial decision for political reasons, namely, to help Bird win voter confirmation on November 7, 1978.

On that very day, it may be recalled briefly, The Times broke its story that the California Supreme Court was delaying announcement of a decision in the so-called gun law case, *People v. Tanner*. Chief Justice Bird, the page one story reported, was part of a four-to-three majority decision overturning a State law mandating a prison term for anyone using a gun in a serious crime. In the wake of this story, which caused an immediate political uproar, the Court released its decision in the case on December 22, 1978. A four-judge majority held that Tanner, who had used a gun in a robbery, need not be sentenced to prison. Two months later, however, the Court agreed to rehear the case. Then in June, 1979, with one judge switching to produce a four-to-three majority the other way, the Court upheld the gun law.

Had there been improper delay or leaks in the case? No, the Commission on Judicial Performance said in effect, announcing on November 5, 1979, that it had found no basis for bringing formal charges against any member of the Court.

Chief Justice Bird is a controversial figure; to deny this would be to ignore strong off-the-record comments by both active and recently retired judges, summarized in the phrase, "the system is falling apart." Professor Stolz probably set out to write a straight legal history of a political "hot potato" and found that his book had become a part of the controversy.

That Stolz's book is an addition to California legal history does not prevent its author from drawing strong conclusions about the causes of the controversy. In the closing section, "Some Observations About Accountability," Stolz discusses the historical conflict between the maintenance of judicial power and the rule of the popular majority. He points out that Tocqueville's prediction of the triumph of majority rule over judicial power has not proven correct, but that this battle has persisted throughout the life of the Republic.

Stuart B. Walzer

Stolz says the preservation of judicial power depends on the judges limiting their role and appealing to the moderate middle. He believes that judges should see themselves as neutral interpreters of policy principally declared through the political arm of the government, that "majoritarian power is debilitating only if the justices believe they have a mandate to govern by virtue of their office." Further, "If the Court has no program beyond fair process and if its fundamental principle is to do its best to understand, articulate, and promote the policy preferences of others, then judicial power should endure despite the ambiguities inherent in the justices' high office."

Justices of the California Supreme Court may have a duty that goes beyond determining the popular will, as embodied in the statutes, and in simply implementing that will. Still, the question remains as to how far the justices may go in frustrating that will and what occasions may justify such results.

Stolz raises some interesting, practical and philosophical problems when he discusses the appointment of Supreme Court justices. He says that voters have come to accept as routine the idea that appointments to the Court are in part a political act. Jerry Brown did not start the process. For many years there was a "Jewish seat" on the United States Supreme Court and there is now a "black seat" and perhaps a "female seat." We may even be seeing the beginning of a "Chicano seat." Once religious, ethnic, racial, and sexual factors become the determining factor it is difficult to hold a governor or president accountable for judicial appointments. But Jerry Brown has made considerable political capital out of his appointment of women, blacks, and Chicanos to the bench. The question of whether the appointee is qualified or performs adequately does not appear to significantly affect his decision as to who to appoint to the California Supreme Court or any other judicial office for that matter. Neither did Ronald Reagan when he was governor; the appointment of Donald Wright as Chief Justice appears to have been a lucky accident which Reagan later regretted.

Stolz says that evidence presented to the Commission on Judicial Appointments indicated that a successful Supreme Court Justice must have the following personality traits, which he believes to be the traits of a good politician:

> "A genuine respect for the views of others, combined with an instinct for finding the core issue that divides; a capacity to find solutions that accommodate seemingly conflicting principles; a desire to participate in the give-and-take of controversy without accumulating grudges; and, finally, the ability to lead and inspire a small bureaucratic team."

The author attributes the troubles of the California Supreme Court to not having enough people with these characteristics; traits are far more important than profound learning in the law or skill as a writer of opinions, both of which can be filled by staff.

Stolz says that Brown did not give enough care to seeking an appointee who was likely to be influential with colleagues, even those who might be predisposed to have a somewhat different outlook on issues. He attributes this in part to Jerry Brown's penchant for twisting the tail of the establishment. It often appears that the governor dislikes lawyers and that he would like to cut them down to size.

Professor Stolz presents an interesting discussion of the neglect by the Court of its various constituencies. For example, he criticizes the neglect of the legal community as a prime constituency. The Court tends to ignore the written and oral arguments of counsel and to come to

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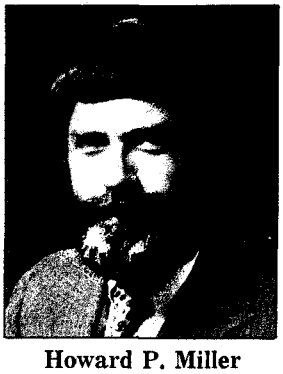
Letter from the President

Much to the chagrin of most business trial lawyers in California, mandatory form pleading is rapidly becoming a reality. Under Code of Civil Procedure Section 425.12, certain forms have been permissible since July of 1981. Of greater concern, however, is that these forms become mandatory as of January 1, 1983.



Howard P. Miller

One assumes that the legislative purpose in adopting a system of form pleading is to simplify the initiation of controversies and ultimately to have matters determined on the merits rather than pleading niceties. Unfortunately, the draftsmen of the current forms appear not to have taken notice of this purpose. The current forms are neither simple, expedient, nor free of problems.

There are two "shell" complaints, a contract shell and a personal injury and property damage shell. These forms are referred to as shells because, to state any cause of action, one must also attach another form for the particular cause of action involved. Unhappily, there are no forms for all causes of action and, therefore, one must be inventive and modify them if, for example, one wishes to state a cause of action for specific performance as well as breach of contract. The contract form can be used for either a complaint or cross-complaint. The tort form is not quite so useful. There is a separate form for a complaint and a cross-complaint.

Without getting into a long dissertation on what one must do, suffice it to say that working a simple claim into the forms presently available involves a fair amount of thought and ingenuity. Hence, what do we do about Doe defendants who seem to have been totally forgotten by the draftsmen? What happens if your cause of action is not neatly to be categorized as in contract or tort?

A decent argument can be made that current pleading practice in California is overly complex and technical. Solutions are available. It would be a simple thing for California to adopt notice pleading as we presently have in the Federal courts. One assumes that we could even adopt a set of forms which would simplify, rather than confuse. The California experience with domestic relations and probate forms appears to have been positive.

There is a rumor afoot that, because of protests received from the bench and organized bar, the currently contemplated forms will be sent back to the drafting board for revision. We hope this will be the case. ABTL has formed a study group to report back to the Board of Governors on suggestions that might be made in this regard. Nevertheless, it does behoove all of us to keep an eye on this situation, as it will be upon us before much time elapses.

—Howard P. Miller

Cameras in the Courtroom: Pro

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state to promulgate its own broadcast guidelines. And last year, the U.S. Supreme Court unanimously held in *Chandler v. Florida* that states may provide for radio, television and still photographic coverage of criminal trials over a defendant's objections.[3] Chief Justice Warren E. Burger's opinion expressly rejected a defense argument that the Court had ruled in the famed 1965 Billy Sol Estes case that the televising of criminal trials is inherently a denial of due process.

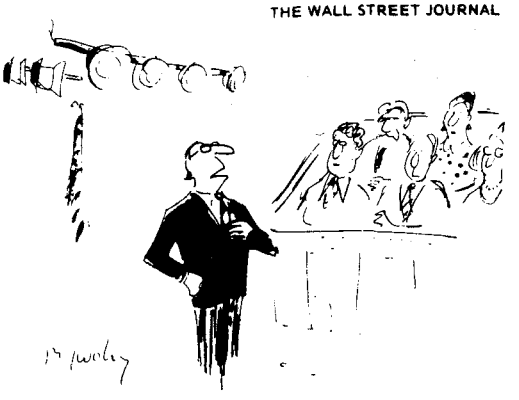
In *Estes v. Texas*[4], the Supreme Court reviewed the conviction of a flamboyant Texas financier on a swindling charge. At the pretrial hearings, television technicians and still photographers roamed unchecked around a courtroom jammed with equipment and spectators. Even though television cameras were confined to a booth in the rear of the courtroom during the trial, the Supreme Court held that the damage had been done. The case resulted in six opinions. Four justices joined in Justice Tom C. Clark's opinion that trial participants would be affected by the presence of cameras — whether they could see them or not. Justice John M. Harlan's concurring opinion, however, was limited to the facts and suggested that technological advances and social acceptance might eliminate due process concerns.

Before *Estes*, at least three states (Colorado, Oklahoma and Texas) allowed electronic equipment and cameras in their courtrooms and some judges in about a dozen other states simply ignored Canon 35. After *Estes*, only Colorado continued to allow courtroom photography and broadcasting until the relatively recent round of "experiments" — one of which resulted in the reversal of the apparent *Estes* ban.

Recently, the National Law Journal reported that 34 states now allow camera coverage of some kind in their courts,[5] although the actual number that permit some broadcasting or televising of proceedings is probably closer to 20 states. Federal Courts, such as the Central District of California, still prohibit cameras in all but ceremonial proceedings.[6] The same article reported that a commission appointed by the Minnesota Supreme Court recently recommended cameras be allowed in trial courtrooms there on a two-year experimental basis. With a quick nod to the bar's long-standing animus to the media, the commission said the press had failed to prove that TV and still cameras were "desirable" but admitted there was "almost no solid empirical evidence" to support the position of judges and lawyers who wanted to keep the prior courtroom ban in effect. In its *Chandler* decision, the U.S. Supreme Court came to the same conclusion.[7]

California's current experiment with televised court hearings, Rule 980.2 of the California Rules of Court (see adjoining box), sets forth detailed limits on press coverage in an attempt to balance free press/fair trial concerns. Under Rule 980.2, the judge has wide discretion in granting any media request to televise criminal or civil proceedings, although the litigants themselves do have the right to move to close the courtroom to cameras. Unlike other states such as North Dakota,[8] California does *not* give litigants an absolute veto power over the media's right to televise public court proceedings.

But in contrast to states such as New York,[9] California does limit the judge's power in allowing televised proceedings. Rule 980.2 sets forth a highly detailed procedure for approving and monitoring cameras in the courtroom.



"Ladies and gentlemen of the jury, Your Honor, folks at home. . . ."

Written requests by the media must be made in advance of the hearing and certain aspects of litigation, such as conferences in chambers, cannot be televised. Furthermore, Rule 980.2 sets forth detailed technical specifications for the types of cameras and microphones which may be used.

Critics of courtroom cameras usually base their arguments on the purported physical and psychological impacts of television equipment in the courtroom. But the Supreme Court's *Chandler* opinion illustrates how far removed we are from the physically intrusive technology of the *Estes* era. Gone are the bright lights, the cables snaking through the courtroom, the battery of technicians, the huge whirring cameras. Instead, the media may choose from a variety of available light, noise-free equipment (see Schedule A to Rule 980.2). At least from a technical standpoint, we have fulfilled Justice Harlan's prophecy that:

> "the day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process."[10]

In recent years, television has uneventfully covered events of great solemnity — state funerals, church services, the marriage of a future king of the British Empire (or what is left of it). It has also provided extended coverage of government at work — from the dramatic to the humdrum (compare the Watergate hearings with the workmanlike coverage of the House of Representatives by C-SPAN, a satellite-delivered public affairs cable network). Cities seeking proposals for cable television systems routinely demand that applicants provide channels and cameras for coverage of city council and institutional meetings. The public has a right to expect — and deserves — no less surrogate access to the courts.

As Chief Justice Burger has observed, people now acquire information about trials chiefly through the electronic and print media.[11] Only the electronic media can provide the reality of the real life drama once available solely in the back benches of the courtroom.

The knee-jerk reaction of most business litigators is all too often to keep the cameras out of the courtroom. Altruistic notions aside, there are a number of compelling reasons for business litigators to actually invite televised coverage of court proceedings.

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Excerpt from California Rule 980.2

(EXPERIMENTAL ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS — OPERATIVE UP TO AND INCLUDING DEC. 31, 1982)

....

(e) *(Request for extended coverage)* [i.e., any media recording or broadcast by the use of television, radio, photographic or recording equipment].

(1) All requests for extended coverage shall be made by the media to the court or judge a reasonable time in advance of the commencement of the extended coverage to allow compliance with all the provisions of these rules.

(2) Requests for extended coverage shall be made in writing, and shall refer to the individual proceeding with sufficient identification to assist the judge in considering the request . . .

(f) *(Consent to Extend Coverage)*

(1) No extended coverage shall be allowed except with the consent of the judge. Such consent shall be in writing, filed in the record of the proceedings, and recorded in the minutes of the court.

(2) The judge may in the interests of justice, refuse, limit or terminate extended coverage if a party objects to extended coverage.

(3) The consent of the attorney for a party shall not be required, but the attorney may direct a motion to the judge to refuse, limit or terminate extended coverage. Such motion shall be directed to the discretion of the judge . . .

(4) The judge may, in the interests of justice, refuse, limit or terminate extended coverage of any witness who objects to extended coverage.

(5) The consent of jurors shall not be required for extended coverage, but such extended coverage shall be subject to the limitations and exclusions provided in subdivision (g) . . .

(g) *(Restrictions on extended coverage)*

(1) There shall be no extended coverage of any proceedings which are by law closed to the public, or which may be closed to the public and which have been closed by the judge.

(2) There shall be no extended coverage of the selection of the prospective jury during voir dire.

(3) There shall be no closeup or "zoom" extended coverage of individual members of the jury while in the jury box, while within the courtroom, while in the jury deliberation room during recess, or while going to or from the deliberation room at any time.

(4) To protect the attorney-client privilege and the effective right to counsel of all trial parties, there shall be no audio coverage of conferences between attorneys and clients or parties, or between co-counsel and clients or parties, or between counsel and the judge held at the bench.

(5) There shall be no extended coverage of any conference held in the chambers of a judge.

(6) In order to preclude extended coverage of any matters presented to the court in the absence of the jury which are for the purpose of determining the admissibility of evidence, the judge may conduct hearing in chambers.

(h) *(Extended coverage media standards)*

(1) Equipment and personnel

(i) Equipment from one television station or network — designated as the pooling station or network — shall be permitted access to a courtroom proceeding at one time. The pooling station or network may use portable television cameras that are silent videotape electronic cameras or, . . . silent 16mm sound on film . . . cameras. One television camera, operated by one camera person, shall be admitted to record a proceeding. A second camera may be admitted for live coverage in the discretion of the judge.

(ii) One audio system for broadcast purposes shall be permitted in a proceeding . . .

(iii) One still photographer, using not more than two still cameras with not more than two lenses for each camera, shall be permitted in a proceeding subject to extended coverage . . . A second still photographer . . . may be admitted in the discretion of the judge.

(iv) No equipment or clothing of any extended coverage personnel shall bear any insignia or identification of the individual media or network involved in extended coverage.

(2) Sound and light criteria

(i) Only equipment that does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, camera and audio equipment shall produce no greater sound and light than the equipment designated in Schedule A, annexed hereto . . . No motorized drives shall be permitted, and no moving lights, flash attachments, or sudden lighting changes shall be permitted during court proceedings.

....

(iv) No light or signal visible or audible to trial participants shall be used on any equipment during extended coverage to indicate whether it is operating.

(3) Position and movement during proceedings

(i) Extended coverage personnel and equipment shall be positioned so as to provide reasonable coverage in such location in the court facility as shall be designated by the judge. Equipment that is not a component part of a television camera, and video and sound recording equipment, shall be located outside the courtroom, unless other arrangements are approved in advance by the judge.

....

(iii) All extended coverage equipment operators shall assume their assigned, fixed position within the designated area and once established in that position shall act in a manner so as not to call attention to their activities. Extended coverage equipment operators shall not be permitted to move about during the court session.

(i) *(Pooling)*

(2) Pooling arrangements among members of the media shall be the sole responsibility of the media and shall not require the judge or court personnel to mediate disputes

Cameras in the Courtroom: Pro

Continued from Page 4

First, and most important, is the fact that the only time a litigant would not want televised court proceedings is where he, she or it has something to hide. Televised hearings give members of the public no greater access to the courtroom than they already enjoy if they are willing to attend the hearings in person. Proprietary information, such as trade secrets, can still be protected by closing those aspects of civil litigation, as courts currently do. Furthermore, televised coverage of court proceedings will result in far more accurate dissemination of newsworthy courtroom events than the cartoon depictions that appear on the nightly news. It may also inhibit the highly colored account of courtroom events that some participants are inclined to give on the courthouse steps.

There are even circumstances where business *clients* will want the publicity of a courtroom camera. For example, plaintiffs in an antitrust, fraud or securities action may be able to use the televised proceedings to convince the public of the virtue of their position. A defendant in a libel case may welcome the camera as well. Fear of publicity may inhibit the freewheeling libel plaintiff, who is unready to face testimony concerning the truth of the defamation. And, finally, it should help to assure the client that his attorneys will be well prepared.

Regardless of client desires, the attorney may also find the courtroom camera a help rather than a hindrance. Televised proceedings may assist in notifying plaintiffs in a large class action of the existence of the litigation. Rather than risk public outcry, cantankerous judges may be forced to keep their tempers in check. Jury members will make a greater effort to follow proceedings rather than have their indifference appear on camera. The fact that their testimony may be seen and compared could increase the veracity of expert witnesses who will be less willing to enthusiastically say what their employer wants (and pays) to hear.

Moreover, like the uncertainty of jury demands, the threat of televised proceedings will also have an effect in creating uncertainty and promoting out-of-court settlements. Many litigants may well wish to resolve differences rather than have their dirty linen washed on the six o'clock news.

On a less Machiavellian note, the business litigation bar has a moral and professional obligation to encourage televised court proceedings. Cameras in the courtroom will improve the public's familiarity with the civil litigation process and the quality (or lack thereof) of the lawyers and judges involved.[12] Knowledge of how the system works can engender new respect for our system of justice. Or are we really worried that it won't?

—Durham J. Monsma and Mark A. Neubauer

FOOTNOTES

1 According to The Roper Organization, Inc., television is easily the public's leading source of news and information. By an even wider margin, television is rated over newspapers, radio, and magazines as the most believable medium. See Goldman & Larson, News Camera in the Courtroom During State v. Solorzano: End to the Estes Mandate, 10 S.W. Nev. L. Rev. 2001, 2004-5 (1978).
2 *FCC v. Pacifica Foundation*, 438 U.S. 726, 57 L. Ed. 2nd 1073 (1978).
3 *Chandler v. Florida*, 66 L. Ed. 2d 211, 7 Med. L. Rptr. 1041 (1981).
4 *Estes v. Texas*, 381 U.S. 532, 14 L. Ed. 2d 453 (1964).
5 National Law Journal, January 25, 1982, p. 2.
6 U.S. District Court, Central District of California, Rules of Court, Rule 29.
7 *Chandler v. Florida*, supra, at 1048, fn.11:
"... At the moment, however, there is no unimpeachable empirical support for the thesis that the presence of the electronic media, ipso facto interferes with trial proceedings. . ."
8 Code of Judicial Conduct, North Dakota, Canon 3.
9 New York Rules Governing Judicial Conduct, Section 33.3(7).
10 *Estes v. Texas*, supra, at 595.
11 *Richmond Newspapers, Inc. v. Commonwealth of Virginia*, 448 U.S. 555,573, 65 L. Ed. 2d 973, 987 (1980).
12 *Craig v. Harney*, 331 U.S. 367,374, 91 L. Ed. 1546, 1551 (1947).
"... A trial is a public event. What transpires in the courtroom is public property . . . Those who see and hear what transpired can report it with impunity. There is no special perquisite 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."

Cameras in the Courtroom: Con

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nobling or demeaning, focus attention or be distracting, make vital points public or obscure true issues, impel witnesses to testify truthfully or cause overwhelming anxiety.

I believe this central point has been missed. Television is not *interested* in trials and does not have the slightest intention of televising actual trials, that is, from opening statement to decision. Why? Because trials are boring to the public. And television (*all* television) is in the business of selling to the public, not boring it.

First, let's define *"television."* By *commercial* television, I mean what we all watch (when we watch it), CBS, NBC, ABC and the local channels.

Public television is KCET in Los Angeles, other "community-owned" or "public service" channels and the Public Broadcasting System.

By *cable*, I mean to include all those additional channels that one can acquire by paying, whether through true cable, as Theta, or off the air, as ON-TV.

In the home television includes all current methods of reproduction in the home, meaning video tape and video disc.

Can full trials, culled from all areas of litigation, survive on any of these media?

How about *commercial* television?

> Hi! This is your friendly announcer broadcasting from the Los Angeles County Courthouse with Loni Anderson, Farah Fawcett, Connie Stevens and all the guys and dolls from O'Melveny & Myers and Gibson, Dunn & Crutcher for another Battle of the Behemoths when Memorex and IBM square off again in the anti-trust collision of the century. Only this time around they're going to use state law, since no one could understand that Federal stuff. But seriously folks, we've just learned that we're quadruple "R" on the trailing calendar, so stay tuned for about four months when I'm sure this thing will get started.

Public Television? Our best bet, but it is selling something too — membership — and this requires a continuing flow of "almost" commercial programs to keep the coffers full and the public intrigued. It is doubtful that public television would commit 6-7 hours per day for weeks at a time for trials. Once, perhaps, as with the broadcasting of the Watergate hearings, but not regularly.

Cable TV? It is hard to imagine a more commercial enterprise, but Cable does have a lot of channels available, which means a lot of time to fill. Cable News Network, out of Atlanta, Georgia, televised all of the direct and cross-examination of Carol Burnett in her action against the *National Enquirer*. While this presentation met most of the above criteria, it illustrates perfectly my main thesis, which is that television wants to excerpt the sensational. CNN broadcast nothing beyond Carol Burnett on the stand. I watched it, and despite an excellent cross-examination by ABTL Past President Bill Masterson and the relaxed responses of the most effective witness I've ever seen, Carol Burnett, the show was boring. I do not believe we can expect Cable to adopt the conditions outlined above.

What about pre-recorded video tapes or video discs for *in the home* use? This may be the most commercially competitive area of TV, the least likely to respond. But if the industry does, I'm sure we can expect the following commercial.

Sound effects: Siren — gunfire.

> *Announcer:* I'm sure you recognize those classic refrains. They can mean only one thing — Crime! But did you know that Crime also means *Trial.* Yes, and, now, through the magic of video tape, in the comfort of your own home, you can have a complete collection of the Trials of the Century. Thrill again to the cross-examination in the *Triangle Shirtwaist Company* fire; view the bloody photos introduced in the Manson case. You can have any one of your favorite trials, complete on video tape, at a cost less than spending one hour with your own lawyer.

My facetiousness is arch, but has a point. Trials serve a particular and obvious function in our society. They were constitutionally mandated to be public to avoid "star-chamber" proceedings, or secret and illegal prosecutions, which the founders of this country would no longer tolerate. They were certainly not meant to be entertainment; in fact, they are not entertaining. If you do not believe this, on any afternoon compare the number of disinterested persons viewing trials in the L.A. Central District Court with the number of persons viewing the pigeons in Pershing Square. (And L.A. Central is air-conditioned.)

Trials are not truly educational either. Viewing one or two might provide some insight into the process for the layman, but one or two would not be enough. No one could learn the law by watching trials.

So trials, for the trial watcher, boil down to news. And news on television is something to titillate, to excite, to entertain, to sell goods; it is *not* something done as a public service to keep the populace informed so it can better function in a democracy.

By way of example, on the morning of February 18, 1982, the number one news story on both Cable News Network from Atlanta and the Today Show from New York was the sniper slayings in a trailer park in Chula Vista, California. That was the morning when the Los Angeles Times featured the three per cent dip in U.S. industrial output and the one-half per cent rise in the prime rate as its lead story. Other front page items included the halting of peso trading in Mexico, proposed defense cuts, the revelation of a massacre in El Salvador, and the deaths of Thelonius Monk and Lee Strassberg. The sniper attack was in the second section.

If the televising of trials is allowed, we can expect 30 to 60-second excerpts of celebrities in anguish or anger, accused murderers in the midst of emotional outbursts, judges scowling and gavels rapping, lawyers pointing fingers or shouting, and not much else.

So I support cameras in the courtroom, as long as the conditions set forth above are met. I will even compromise (that sounds like a lawyer) and drop all my conditions save one: Trials must be televised in their entirety.

Good night, Mark.

Good night, Durham.

—Thomas J. McDermott, Jr.

Monsma & Neubauer Comment

Our colleague McDermott's puckish riposte confirms a suspicion held by many journalists: lawyers can't stand to be edited. Tom is simply more honest than most of us.

It isn't the medium that Tom wants to censor, it's the message.

Television is an attractive target because of its power to distill the dramatic. Not much can be done about the print editorial process because we have this funny little thing called the First Amendment. So, no one insists that newspapers carry full trial transcripts and we grudgingly put up with sensational or slanted coverage of the courts in the hope that some good emerges from the babble.

Assuming that the case against television no longer rests on its power to disrupt court proceedings, Brother McDermott might be interested in another view of his argument which appeared nearly 20 years ago:

> "Much of the respect, even awe, in which law and lawyers are generally held by laymen has its source in the aura of solemnity which surrounds the craft from the ponderous language to the musty lawbooks that line lawyers' offices, to, especially, the almost religious ritual of the courtroom itsef . . . [I]t made them [judges and lawyers] and their work, however trivial on occasion, look important and impressive. The idea of opening a courtroom, like a ball park or a convention hall, to television offends much of the profession less because of a fear of unfair trials than because of a fear of detracting from the dignity of the court — and of themselves."[13]

13 Rodell, TV or No TV in Court? New York Times Magazine, April 12, 1964, at 16,103.

McDermott Rejoinder

As with all effective ripostes, Messrs. Neubauer and Monsma have caused me to rethink my position. Rethink it, but not change it. Refine it, perhaps.

The newspaper is no more like television than an automobile is like a telephone. Both can be used to transport words but in an entirely different fashion. Television is not my target because of "its power to distill the dramatic." It is my target because it intentionally distills to be dramatic; and combined with its visual element, this becomes more powerful than print can ever be. On the other hand, only print can present matters in depth, because only print can be pursued at a rational pace, ten times as fast as television where the going is easy, slower than television where the concepts are difficult.

If television is given free access to the courtroom, the First Amendment certainly would prohibit my proposal. But television will disrupt the courtroom proceedings. The *quid pro quo* for allowing that disruption should be the requirement that cases be televised in their entirety.

As to lawyers' dignity being threatened, what dignity is that? Rodell was writing almost twenty years ago. I would *enjoy* being on the six o'clock news. My children might show me more respect, sort of like the Fonz or Scooby Doo.

So should we open up the courtroom to television like the ballpark and the convention hall? If we want the law to follow the same path that has been followed by baseball, football and politics over the last 25 years, then let's do it. I'm counting my residuals already.

'Judging Judges'

Continued from Page 3

decisions on broad policy grounds other than those presented. The Court, he suggests, has stopped thinking of counsel as a primary audience to be addressed. This neglect has an impact on the bar in that if the Court refuses to deal with good arguments it becomes less important to make them.

The enormous growth of the bar, Stolz claims, has resulted in many specialty bars. Hence, many lawyers have stopped reading the general run of decisions as they come down, and look at the opinions only if they have reason to research a point of law. The broad critical audience that existed when lawyers were generalists and read all of the decisions of the Supreme Court has been lost. Instead, small portions of the Court's decisions are watched closely by lawyers whose attitudes are shaped by their specialty. Stolz feels that this partisan perspective puts too much stress on winning or losing rather than on the persuasiveness of an opinion's reasoning. In turn, the result is that justices tend to pay less attention to crafting their opinions, since winning or losing is what matters most to the audience.

Stolz is critical of Justice Bird's ability as a Court administrator. Her system of assigning trial court judges to the appellate bench has been perceived as a symbolic attack on the hierarchical structure of the Court system. Writes Stolz: "It is one thing to say, as Bird probably meant, that Municipal Courts are an important part of the system of justice; it is another to suggest that Municipal judges and Supreme Court justices are fungible commodities by assigning a Municipal judge to sit Pro Tem on the Supreme Court. The imperatives of the system require that Municipal Court judges not be encouraged to think they have the same function as Appellate judges at the highest level."

"Judging Judges" was not easy reading for me. The main cast of characters is an interesting group of people, but it would have been well to know more about the life, personalities, work habits and daily routines of people like Justice Bird, Seth Hufstedler or Hillel Chodos, all of whom were described but never seem to come alive. Justice Willam Clark, now President Reagan's National Security Adviser, is portrayed as a man who has more than his share of axes to grind — like an Iago whose innuendos bring others down. Yet, he is portrayed only in the most dispassionate terms. There are not enough heroes and villains for me.

On balance, this work is well worth reading, though it takes considerable effort and motivation to do it justice. The book is sufficiently meaty to give scholars something to chew on for a long time to come. It also is full of ideas and, for those who persevere, new knowledge.

—Stuart B. Walzer

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Time to Trial in Southern California Courts

(Ed. Note: In view of existing court congestion, it is felt that attorneys will be interested in knowing the times required to bring cases to trial in various jurisdictions throughout Southern California. Accordingly, ABTL Report *conducted a survey of the Federal and State court clerks' offices to obtain the information below.)*

U.S. DISTRICT COURTS

	Interval from filing of Complaint to Trial (Median Time) (In months)
Central District	31
Southern District	23

(From Annual Report of Director of Administrative Office of U.S. District Courts for 12 month period ending June 30, 1981)

LOS ANGELES SUPERIOR COURT

	Interval from filing of At-Issue Memo to commencement of Trial (Median Time) (In months)	
	Jury	Non-Jury
Central District	48	40
West District (Santa Monica)	46	50½
East District (Pomona)	43	27½
North Central District (Burbank - Glendale)	20	14
Northeast District (Pasadena)	45	28½
Northwest District (Van Nuys)	47	30
South District (Long Beach)	27	21
South Central District (Compton)	21	22
Southeast District (Norwalk)	19	17
Southwest District (Torrance)	44½	33

(From Monthly Conspectus for December 1981, covering three-month period, issued by Los Angeles Superior Court).

OTHER SUPERIOR COURTS[1]

Orange County	22	22
Riverside County[2]	7 to 9	7 to 9
San Bernardino County	8 to 9	8 to 9
San Diego County	21	21
Santa Barbara County	6	6
Ventura County	6 to 8	6 to 8

1 This information was obtained from the County clerk's offices of the respective courts. However, in certain instances the data upon which such figures are based differ; e.g., some are predicated upon median time calculations and others on current estimates of the clerk's offices.

2 Riverside County has had a moratorium on filing At-Issue Memoranda.