DOCUMENT RESUME

ED 296 422 CS 506 275

AUTHOR Alexander, S. L.
TITLE Curious History: The ABA Code of Judicial Ethics Canon 35.
PUB DATE Jul 88
NOTE 27p.; Paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication (71st, Portland, OR, July 2-5, 1988.)
PUB TYPE Speeches/Conference Papers (150) -- Historical Materials (060) -- Information Analyses (070)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Courts; *Ethics; *Freedom of Information; *Mass Media Effects; *News Media; Photography; Photojournalism; *Publicity
IDENTIFIERS *American Bar Association Canon 35; *Chandler v Florida; Journalism History; Judicial Attitudes; Supreme Court

ABSTRACT

With the latest appointment to the United States Supreme Court, five of the nine justices have indicated a willingness to consider some form of camera coverage in federal courts. The landmark cases, Estes versus Texas (1965) and Chandler versus Florida (1980), called for more data prior to reconsideration of the issue. An in-depth examination of original documents concerning the development of the American Bar Association's (ABA) 1937 camera ban, reveals that although the press/bar committee considering the issue recommended implementation of camera coverage of proceedings, and delegates to the 1937 convention agreed, internal ABA politics and other factors led to the paradoxical vote by the same delegates to accept a different committee's recommendation of the ban. Regarding the status of courtroom cameras today, 43 states permit some form of coverage in the state courts. There are no cameras in federal courts, because of a specific federal ban on courtroom cameras. The author of a recent definitive study of courtroom coverage has concluded that the research indicates that many of the prejudicial influences once thought to result from cameras in courtrooms actually develop regardless of the presence of the media and are due to the intrinsic nature of the trial process. (Forty-seven notes, 22 primary sources, 7 legal criticisms, and 13 secondary sources are appended.) (RAE)

CURIOUS HISTORY:
The ABA Code of Judicial Ethics Canon 35

S.L. Alexander
The University of Florida

Law Division, AEJMC
(July, 1988)

With the latest appointment to the U.S. Supreme Court, five justices have indicated a willingness to consider some form of camera coverage in federal courts. The landmark cases Estes v Texas (1965) and Chandler v Florida (1980) called for more data prior to reconsideration of the issue. Thus, as a preliminary to a case study of courtroom coverage, the researcher considers the development of the camera ban, the American Bar Association's 1937 Canon 35, 3(A) 7. An in-depth examination of original documents reveals that although the press/bar committee considering the issue recommended implementation of cameras, and delegates to the 1937 convention agreed. several factors, primarily internal ABA politics, led to the paradoxical vote by the same delegates to accept a different committee's recommendation of the ban. which. with recent action in the states and by the judiciary, may soon be relegated permanently to the annals of curious history.

CURIOUS HISTORY:

The ABA Code of Judicial Ethics Canon 35

S.L. Alexander

The University of Florida

Presented to the Law Division , Association for Education in Journalism and Mass Communication, Portland, Oregon (July, 1988)

CURIOUS HISTORY:
The ABA Code of Judicial Ethics Canon 35

S.L. Alexander
The University of Florida

Law Division, AEJMC
(July, 1988)

With the latest appointment to the U.S. Supreme Court, five justices have indicated a willingness to consider some form of camera coverage in federal courts. The landmark cases Estes v Texas (1965) and Chandler v Florida (1980) called for more data prior to reconsideration of the issue. Thus, as a preliminary to a case study of courtroom coverage, the researcher considers the development of the camera ban, the American Bar Association's 1937 Canon 35, 3(A) 7. An in-depth examination of original documents reveals that although the press/bar committee considering the issue recommended implementation of cameras, and delegates to the 1937 convention agreed, several factors, primarily internal ABA politics, led to the paradoxical vote by the same delegates to accept a different committee's recommendation of the ban, which, with recent action in the states and by the judiciary, may soon be relegated permanently to the annals of curious history.

> Many years ago, the late Justice Holmes observed that on certain questions, a page of history is worth more than a volume of logic. So now, with your indulgence, I shall turn my attention to the curious history of Canon 35. Elisha Hanson, Attorney[1]

Canon 35, the American Bar Association's prohibition against courtroom cameras, stood virtually intact for nearly 50 years. During this time, many have speculated as to effects of courtroom cameras on trial participants including judges, attorneys, defendants, jurors, and witnesses.

Only recently, however, have the revisionists brought one or two curious aspects of the issue to light. For instance, it had generally been accepted that the behavior of cameramen inside the courtroom at the trial of Bruno Hauptmann for the kidnap and murder of the Lindbergh baby inspired the ABA to pass the prohibition. However, critics now point out that there were other factors which contributed to the circus-like atmosphere of the Hauptmann trial, and the blame for Canon 35 should not lie solely with courtroom cameras as employed in 1935.[2]

Moreover, a close examination of the proceedings of the ABA during the 1930s as Canon 35 developed provides an alternative explanation for the ban. First, in the United States during this time there was a "press-radio war" taking place: print journalists were fighting the advent of broadcasting, including radio and the nascent television industry. Second, the traditional tension between press and bar was reflected in the attempts of the members of the committees on free press/fair trial issues to work together under the auspices of the American Bar Association. Finally, the organizational politics of the ABA also affected the development of Canon 35; in fact, in 1937 the ABA ignored the guidelines for courtroom cameras recommended by one of its committees specifically appointed to consider the

issue and favored the sudden adoption of the flat ban on courtroom cameras proposed by another committee.

The development of Canon 35 will be evaluated in three stages. First, the Hauptmann trial and the followup ABA Hallam Report will be discussed. Next, the work of the ABA's press/bar Baker Committee will be examined. Finally, the adoption of Canon 35 and reaction to the prohibition of cameras will be studied. The events of 1935-1940 laid the groundwork for the next 40-50 years: the ABA did not revise its prohibition until 1982 after the decision of the Supreme Court in Chandler v Florida, (449 US 60, 1981) and state experimentation led to a modification of the ban to allow some use of courtroom cameras.

Hauptmann and Hallam

One of the purposes of the American Bar Association, founded in 1878 at Saratoga Springs, New York, was to design a standard of conduct for members of the legal profession. In 1908, 32 "canons" of conduct were adopted. In 1909, members began to discuss the need to devise standards of judicial conduct, although a committee to do so was not appointed until 1922. The five-member committee, chaired by Supreme Court Justice William H. Taft, recommended 34 canons of judicial conduct, subsequently adopted in 1924.[3]

The ABA is governed by a system of sections and committees which make recommendations for delegates to vote on at annual national conventions. One such committee is the Standing Committee on Professional Ethics and Grievances, which serves as a model for state and local bar associations. The committee's tasks include recommending new canons of conduct, expressing opinions on ethical issues, and hearing complaints against ABA members. This would be the committee expected to be most closely concerned

with the issue of courtroom cameras.

Throughout the 1920s, cameras (still, film, radio, and--eventually--television recording devices have traditionally been included in the term "cameras") had been allowed in some courtrooms and forbidden in others. For instance Judge John T. Raultson allowed camera coverage of the Scopes "monkey" trial in Dayton, Tennessee, in 1925.[4] Judge Eugene O' Dunne prohibited cameras and cited photographers for contempt after a 1927 murder trial in Baltimore.[5] In 1932, after a request from the Los Angeles Bar Association for an opinion, the ABA's Committee on Professional Ethics recommended that the delegates issue a general statement condemning broadcasting of judicial proceedings by radio as a breach of decorum and interference with justice, and the delegates voted to support this resolution.[6] However, it was not until after the trial of Bruno Hauptmann in 1935 that the ABA took any significant action regarding courtroom cameras.

In 1935, Bruno Richard Hauptmann was tried for the 1932 kidnap and murder of the eighteen-month-old son of Charles Lindbergh.[7] The trial, in tiny Flemington, New Jersey, was the most widely-publicized in history, with an estimated 700 newsmen, including 120 cameramen, covering the trial; it began on January 2, 1935, and the guilty verdict was handed down six weeks later, on Valentine's Day.[8]

The presiding judge, Thomas Trenchard, allowed newsreel and still photographers in the courtroom with the proviso that they agree to follow his guidelines restricting photographic coverage. Only when he discovered that one of the newsreel companies had violated his order to keep the cameras in the courtroom turned off during actual court proceedings did the

judge withdraw his permission for film cameras inside the courtroom; still cameramen were allowed to remain.[9]

Photographer Joseph Costa of the New York Morning World was assigned to cover the trial. In a recently-published monograph,[10] Costa said that although some still photographs had been taken surreptitiously, the idea that the cameramen inside the courtroom disrupted the Hauptmann trial was a myth. Costa called the myth a "falsehood," and a "total fabrication," which he said was picked up by researchers and students writing dissertations and repeated as fact, each time repeated made more absurd. According to Costa, some of the fanciful versions of the story were based on "coverage" written by reporters long after the trial--reporters who had not even been in the courtroom during the trial.[11]

A recent examination of contemporary press accounts of the Hauptmann trial led researcher Susanna Barber to conclude that the traditional interpretations regarding the Hauptmann trial were indeed incorrect. She says that the "carnival atmosphere" in the courtroom was not created primarily by photographers but by "prejudicial press reports, contemptuous statements by the trial attorneys and police, the rowdy behavior of the 150 spectators crammed inside the courtroom, by the too numerous reporters who descended on the trial, and by the neglectful judge."[12]

The ABA--at least certain members of the appropriate ABA committees-- knew 50 years ago that the film cameramen were not the major culprits in the Hauptmann case. They knew because they had appointed a Special Committee on Publicity in Criminal Trials, headed by Judge Oscar Hallam (formerly of the Minnesota Supreme Court) to study the problems caused by p ess coverage of the Hauptmann trial, and Hallam's Report of the Special Committee on

Publicity in Criminal Trials described the situation in Flemington in 1935.[13] Judge Trenchard had to control a courtroom in which hundreds of people were crowded, while thousands outside jammed the streets. Attorneys issued subpoenas which were ostensibly for witnesses, but were actually passes to get friends inside the courtroom. The defense counsel carried on a virtual "publicity campaign" during the trial; the prosecutors held daily press briefings, and even the defendant issued periodic bulletins to the public during the trial. From Hallam's account, it is debatable whether the hawking of tiny souvenir ladders, replicas of one allegedly used in the crime, or the offers to jurors-- such as a reported $500 a week for the foreman and $300 for the others for a twelve-week vaudeville engagement-- more accurately characterized the "circus atmosphere" of the Hauptmann trial.

Hallam was particularly concerned with the use of cameras in the courtroom. Although he was resigned to the judge's permitting still cameras-- he said the committee was unable to freely regulate the print media-- he added that during deliberations his committee had strongly objected to the behavior of the motion picture and radio men in the Hauptmann courtroom. He cited four specific reasons for the committee's objections: sound reproduction did not allow for deletion of offensive matter; cameras include inadmissible and prejudicial material; cameras dramatize court proceedings, and--most significantly--the use of cameras (i.e., radio) "brings the revolting details of a murder trial, its crime story and its sensational matter to children of all ages. . ."[14] Hallam and this committee's strong objection to coverage may have been the most influential aspect of the events which ultimately led to the flat ban on

courtroom cameras, Canon 35.

When the recommendations portion of the Hallam Report was released in 1935, the trade magazine of the newspaper industry, Editor and Publisher: The Fourth Estate, surveyed prominent members of the public for reaction to press coverage of the Hauptmann case and to the suggestions in the Report. William Allen White, the eloquent editor of the Emporia, Kansas, Gazette, placed most of the blame on the attorneys, some of whom he described as the "moron minority." White defended the right of the press to freely cover trials; he said, "In limiting those who pander to the dumb, we may stop the flow of information to the wise."[15]

J. Edgar Hoover, described as "chief of the 'G' men," issued a special statement in which he described Hauptmann as having been a "disgusting spectacle" and a "Roman holiday." However, Hoover absolved the press and said, "The press is not to blame. If you put on a freak show, the press will report it as such. If you put on a dignified trial, I am convinced the newspapers will cover it as such."[16]

Walter Lippmann, writer for the New York Herald Tribune, speaking to the American Society of Newspaper Editors, had said that most of the responsibility for the Hauptmann fiasco lay with the legal profession: "We can't edit the yellow press directly or indirectly, and we have no business to try. But we have every right as American citizens to call upon the police. the bench, and the bar to administer the law in a lawful way."[17]

Although Hallam had released his committee's recommendations in 1935, the full Report was only passed on to a subsequent committee appointed in 1936, the Special Committee on Cooperation Between the Press, Radio, and Bar as to Publicity Interfering With Fair Trial of Judicial and Quasi-Judicial

Proceedings ("Special Committee"). In 1937 the Special Committee explained the reason Hallam's full Report had not been made public: before the Report could be published, the "Hauptmann Case" had become a political issue after the governor of New Jersey had become involved in Hauptmann's clemency appeals. As the Special Committee summed up: "Into this controversy it was thought improper to inject the American Bar Association by giving publicity to the Hallam Report, which was, of course, an ex parte critique of a situation which had suddenly become involved in a heated political controversy."[18] As Hallam had concluded in his Report, the Hauptmann trial was unique. "...there never was a case in which publicity agencies and commentators and public argufiers were more unrestrained, never a case which furnishes a better example of things that ought not to have been done."[19]

Baker Report

The ABA's Special Committee on Press, Radio, and Bar succeeded Hallam's committee in 1936. However, Judge Hallam was one of the six ABA members on the new committee chaired by Newton Baker. Baker, the former Secretary of War, had taken stands on behalf of freedom of the press which had earned him the newsmen's respect.

There were also seven representatives of the American Newspaper Publishers Association (ANPA) on the new committee, (the most prominent being Colonel R. McCormick of the Chicago Tribune and A.H. Sulzberger of the New York Times). Five men represented the American Society of Newspaper Editors (ASNE). The Committee met first in New York City on April 24, 1936. On January 15, 1937, they met to approve their final report to the ABA.[20]

The 1937 Baker Report is quite candid in discussing the problems of press

coverage of courtroom trials: the judiciary did not always act purely in the public interest; lawyers were not immune from politics; and as newspapers are commercial operations, some publishers, ". . . either from temperament or the profit motive disregard the higher ethics of the newspaper profession."[21] The Report cautioned that although jury members could be shielded from newspaper coverage of trials, headlines and especially photographs might catch the eye of a juror. Even worse, according to the Report, was radio coverage and its concomitant "evil of the trial in the air."[22]

It was not surprising that a committee in which the sole press representatives were executives of newspapers would be unanimous in its wariness toward broadcast coverage of courtrooms. In fact, during the 1930s, a "press-radio war" was being fought. Newspapermen resented the upstart medium, viewed as a threat to their advertising income, and employed such tactics as threatening to boycott wire services which supplied broadcasters with stories. Some newspapers refused to print radio logs. According to one agreement, radio newscasts were to end each broadcast with words to the effect,"For full details, consult your local newspaper."[23]

Thus, the Baker Report, written by a committee of newspaper men and lawyers during the "press-radio war," emphasized special caution in broadcasting courtroom proceedings. The Committee referred to the "danger" arising from the misuse of radio, pointing out that almost everyone had a receiving set since there were more than three million in use in 1937. Although responsible broadcasters would protect themselves against misuse of facilities, "... local broadcasting companies are under a severe

temptation to permit the dramatization of a local trial which is exciting public interest and the danger of having two trials going on at the same time--one in the courtroom and one in the circumambient air--is obvious."[24]

It is significant that the members of the Baker Committee were self-conscious that their Committee, established purportedly to deal with "Cooperation Between the Press, Radio, and Bar," had no representatives from radio. Several times during meetings and presentations this conspicuous absence was mentioned. The Report had noted that suggestions had been made from the start that representatives of radio should be added to the Committee but that members felt the current committee "adequately represented those most directly concerned."[25]

In his 1940 discussion of the 1937 Baker Committee, Hallam called the lack of radio members an "oversight." This may have been self-serving hindsight since Hallam had been a member of the Committee himself, and, in fact, due to the illness of Baker, had ended up presenting the Baker Report to the ABA delegates. [26] A follow-up Baker Report issued in 1938 again referred to the lack of radio representation, saying that although the Committee was aware of suggestions that radio should be represented: "This committee believes, however, that as a special committee it has gone as far as it should."[27]

The trade magazine of the radio industry, Broadcasting, predictably editorialized against the Committee's lack of radio representation, saying it seemed "strange" that a committee on press, bar, and radio should lack radio people. The editors dismissed the issue with tongue in cheek: "The broadcasting industry wouldn't for a moment criticize the distinguished ABA for this evident oversight--particularly since the bar, above all else,

insists upon a fair hearing for all ideas of an issue..."[28] The trade journal of the print industry, Editor and Publisher, was satisfied with the makeup of the Committee (six ABA members and twelve newspapermen) until 1939, long after the passage of Canon 35 had made the work of the Committee irrelevant. Only then did members of the ANPA point out that since the title of the Committee indicated radio was to have been a major consideration in courtroom coverage guidelines, there was little purpose in continuing the Committee's work without members of radio.

The print representatives on the Baker Committee cited the traditional antagonism between journalists and lawyers as having distracted them from soliciting radio members: "...the problem of newspaper and bar co-operation was so engrossing during the first two years of the Committee's life that nothing was done about radio."[29] Not until 1939 was a last-ditch effort made to invite broadcast members to join the Committee, but this was merely a token gesture, because by this time the ABA had overridden the Baker Committee recommendations regarding courtroom cameras and adopted Canon 35.

The 1937 Baker Report dealt with the sixteen suggestions Hallam had released, recommendations designed to encourage more control by judges over courtroom proceedings in order to discourage future free press-fair trial problems such as those which had arisen during Hauptmann. Three of the suggestions were ignored, and all but two of the rest were adopted in part or in full by the Baker Committee as recommendations to the ABA, including limiting spectators to seating capacity of the courtroom and forbidding participation of court officials in vaudeville shows. The members agreed it was too early in the history of a new medium to decide on the use of radio in the courtroom.

The only issue over which the members of the Baker Committee did not agree among themselves was that regarding cameras in the courtroom.[30] The ABA members on the Baker Committee insisted permission of counsel for the accused in a criminal case should be obtained before cameras should be allowed. The newspapermen said only the judge's permission should be required and emphasized their constitutional right to take photographs. Thus, the divisive issue was how to implement coutroom coverage--not whether courtroom coverage should be allowed.

This fact, along with the full agreement among Baker Committee members on the majority of the recommendations, agreement so hard-won due to traditional press-bar conflict, is generally overlooked in discussions of the history of Canon 35. Few researchers emphasize the primary source--the ABA Reports--or Broadcasting and Editor and Publisher.

And few point out the ultimate absurdity: First, on September 27, 1937, the ABA convention delegates voted to accept the Baker Committee recommendations and to extend the Baker Committee for another year in order that the final issue of conflict--specifics of control of courtroom cameras--could be resolved. Then just three days after the Baker Report was accepted, on September 30, 1937, the same delegates at the same ABA convention also voted without discussion to accept a package of recommendations from the Standing Committee on Professional Ethics. This package included a flat ban on courtroom cameras, Canon 35:

Canon 35 Improper Publicizing of Court Proceedings

> Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom during sessions of the court or recesses between sessions, and the broadcasting of such proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court, and create misconceptions with respect thereto in the mind of the public and should not be permitted.[31]

Why did the ABA pass Canon 35 three days after voting to accept the Baker Committee Report which called for another year to work out specifics of courtroom coverage? Why would an organization ignore two years' work by one committee, specifically appointed to work out free press/fair trial guidelines, and adopt a conflicting recommendation from a standing committee? One potential explanation lies in the political nature of the ABA.

The principle ABA member on the Special Committee--the one who (ironically) was selected to actually deliver the Baker Report to the ABA convention--was Judge Oscar Hallam. Hallam had written the earlier study on coverage of the Hauptmann trial and had released part of it to the ABA delegates and to the press despite objections from others involved. And Hallam, one might infer, may have had some concern that his own Report, which had called for a flat ban on courtroom cameras, had been suppressed in favor of a report which called for developing guidelines to implement camera coverage.

In 1940, Judge Hallam suggested that the way the issue had been handled in 1937 was insignificant. As he explained, "Through unfortunate lack of coordination, this Canon was passed by the House of Delegates at a session on September 30, 1937, without mention of the resolution of September 27."[28]

However, even Hallam was forced to admit that the newspapermen on the Baker Committee did not share his evaluation of the issue as insignificant. In fact once Canon 35 was passed, it became increasingly difficult for the

lawyers to convince the members of the press to continue work on the Special Committee. Hallam cites the response of Paul Bellamy, the chairman of the ANPA, to the passage of Canon 35: "The American Bar Association. . . took the somewhat inconsistent position of adopting the Baker Report and at the same time declaring through the new Canon 35 a very transigent attitude toward the press." Bellamy then complained that "the lawyers had asked us to cooperate with them to work out a formula by which we could live together in peace, and on the other hand kicked us in the groin. . ."[33]

The events surrounding the adoption of Canon 35 were symptomatic of the continued internal bickering among factions of the ABA. The Chairman of the Special Committee, Giles Patterson (who had nominally replaced the ill Newton Baker in 1937), admitted there had been a great deal of "crossing of wires." He reported to the Ethics Committee that after the passage of Canon 35, the newspapermen balked: "... they felt the Bar had, so to speak, cut them off on this subject of cameras. We have taken no definite position on that, and it is not our purpose or our desire to take over any of the duties of the Ethics Committee any more than it is yours to take ours, nor is it our purpose to run counter to the Ethics Committee in its plans."[34]

With the work of the joint Committee usurped by the recommendation of a standing Committee of ABA members, the blatant territorial imperative this represented marked the beginning of the end for the Special (Baker) Committee and for the short happy era of cooperation between press and bar. In 1938, one ABA member suggested that the Special Committee should defer in future to the Standing Committee on Ethics. The 1939 Report of the Special Committee was largely ignored. The 1940 Special Committee Report itself suggested that cases pending before the Supreme Court rather than

the Special Committee would decide future free press/fair trial issues. And when in 1941 the Special Committee asked to be dissolved, the delegates did not try to persuade anyone otherwise.

Meanwhile, once the journalists realized they had been out-maneuvered, the broadcast trade press began to editorialize against Canon 35. In fact, for the next 50 years the broadcasters led the fight to revise, or preferably to eliminate, Canon 35. However, in contrast, the initial reaction of the print trade journal, Editor and Publisher, appeared to be one of either deliberate or feigned ignorance of the implementation of Canon 35: the journal covered only the events of the ABA's convention on September 27, 1937, when the delgates adopted the Baker Committee Report. It appears that not until a full year had passed, when the ANPA held its annual convention in April, 1939, did the trade journal report on Canon 35. At this time the ANPA members of the ABA Special Committee came to the belated realization that with the passage of Canon 35 and without the cooperation of broadcast members, there would be no purpose to be served in future meetings of the ABA Special Committee.[35]

Direct self-criticism by the Bar of the manner in which the ABA had adopted Canon 35 was a long time coming. ABA member Albert Blashfield, representing those then concerned with revising Canon 35, wrote in the 1962 Bar Journal of the genesis of Canon 35 "with the hope that the story will serve to encourage a more responsible and objective approach to the proposed revision."[36] Blashfield pointed out that in 1937 there had been no reference to the Baker Report when Canon 35 was adopted, no discussion of the Canon, no dissenting vote. Blashfield said that in 1938, "There was strong feeling the House had acted too hastily in 1937."[37] Be that as it

may, the only action taken by the ABA was to dilute the 1938 Special Committee Report with an injunction restraining the Special Committee from expressing any opinion on any question of professional or judicial ethics that might arise in connection with its work, thus rendering the Special Committee entirely ineffectual. Blashfield concluded, "Whether the untimely demise of this important project would have occurred had Newton D. Baker lived to guide the destiny of the joint conference committee is a matter for interesting speculation."[38]

One other ABA member, Elisha Hanson, representing a 1958 coalition of press groups hoping to revise Canon 35, had also gone on record noting the "curious history" of Canon 35:

> Entirely without reference to the work of the Special Committee on Cooperation with the Media, the Committee on Professional Ethics and Grievances proposed the adoption of a new canon--the present Canon 35. Its motion was carried without discussion. Canon 35 was not only drastic but punitive in effect--the very antithesis of what the Committee on Cooperation was striving for. Its adoption was a rebuff not only to the Special Committee, but to the media committees as well. Its adoption pointed up not only a deep-seated conflict within this Asscociation, but an equally deep-seated resentment by some members of this Association against the media. . . The two decades that have passed since the Special Committee made its 1937 report have shown that it was a tragic day for the bar, for the media, and above all, for the public, when the Report was cast into limbo and its authors repudiated for their effort to set up ideals for the proper handling of publicity of trials.[39]

Conclusion

Canon 35 remained in effect for more than 40 years. The ABA Committee on Ethics has handed down only a handful of opinions regarding the Canon. There was only one signifcant revision: television was specifically added to the prohibition in 1952. And although there has been continued debate on revising or even revoking Canon 35, the prohibition against cameras in courtrooms remained generally intact.[40]

Throughout the 1960s, decisions of the U.S. Supreme Court involving overturning of convictions due to lack of due process in such cases as Estes v Texas (381 US 532, 1965) and Sheppard v Maxwell (384 US 333, 1966), led some to interpret the high court's holdings as per se bans on courtroom coverage. However, others interpreted such decisions as permitting broadcasters to continue to experiment with courtroom cameras in various states.

The Florida experiment eventually led to Chandler v Florida (449 US 560,1981). In Chandler, the Court took a neutral stand on cameras in state courts, denying any inherent unfairness in cases involving coverage and specifically allowing state experimentation to continue. In 1982, the ABA, citing Chandler as well as increased employment of courtroom cameras in the various states, finally modified Canon 35--now revised as Canon 3(A) 7--to permit some courtroom coverage under the supervision of each state's highest court.[41]

Regarding the status of courtroom cameras today, 43 states permit some form of coverage in the state courts.[42] There are no cameras in fedreral courts, but in a recent Florida case,[43] a federal district court judge's request to have his bribery trial covered was denied and the denial upheld due to a specific federal ban on courtroom cameras.[44] However, a concurring judge in the appeals case said the issue of coverage of federal courts is "ripe for reconsideration by the appropriate rulemaking authority."[45]

And Susanna Barber, the author of a recent definitive study of courtroom coverage, has concluded the research indicates that many of the prejudicial influences once thought to result from cameras in courtrooms actually

develop regardless of the presence of the media and are due to the intrinsic nature of the trial process.[46]

Thus, despite the traditional conflicts between print and broadcast journalists and between press and bar, and despite the internecine conflict among members of the ABA, the ban on courtroom coverage, Canon 35, may soon be relegated permanently to the annals of "curious history." Perhaps Colonel Robert McCormick, the colorful Chicago publisher who served on the ABA Special Committee, should have been taken more seriously in 1938:

> I venture to say that the use of the camera in the court will become as common as the shorthand reporter. . . Let us not say that the. . . broadcasting of trials will turn them into circuses. If trials are turned into circuses, only the trial lawyers and the court can set the scene . . . reporters can only repeat what they hear. . .[47]

Notes

1 83 ABA Report, 659.

2 See Susanna Barber, Chapter Two, "Cameras in the Courtroom: A Social Scientific Evaluation." (PhD Dissertation, Bowling Green State University, Ohio, 1981); Joseph Costa, "Cameras in the Courtroom: A Position Paper." (Journalism/Public Relations Research Center, Ball State University, Muncie, Indiana, 1980); Richard Kielbowicz "The Story Behind the Adoption of the Ban on Courtroom Cameras," Judicature 63 (June/July, 1979): 14-23.

3 See Edson R. Sunderland. History of the American Bar Association and Its Work. Chicago: Reginald Heber Smith, 1953.

4 152 Tenn 424, 278 SW 57; 154 Tenn 105, 289 SW 365.

5 The contempt case is Ex parte strum, 152 Md 114, 136 at 312 (Ct App 1927).

6 Formal Opinion 67, 57 ABA Report, 147.

7 State v Hauptmann, 115 NJL 412, 180 A 809 cert den 296 US 649 (1935).

8 Discussion here based on accounts of the trial in Barber; Costa; Oscar Hallam, "Some Object Lessons on Publicity in Criminal Trials," Minnesota Law Review 24 (March, 1940): 453-477 and Appendix: "Report of Special Committee on Publicity in Criminal Trials" (1935): 477-503; and Kielbowicz.

9 Kielbowicz (p 19) points out that the cameras could run without the judge's knowledge, which seems to contradict traditional speculation that film equipment 50 years ago was too crude to allow cameras in courts without distraction.

10 Costa, "Cameras."

11 Ibid, p 4.

12 Barber, "Cameras," pp 11-12.

13 Hallam. "Report."

14 Ibid, pp 493-4.

15 Cited in "Press Sympathetic But Skeptical Toward Control of Trial Ballyhoo," (July 20, 1935) p 4.

16 Ibid.

17 Editor and Publisher (April 25, 1936) p 36.

18 62 ABA Report 852.

19 Hallam, "Object Lessons," p 454.

[20] 62 ABA Report, 851-866.

[21] Ibid, p 855.

[22] Ibid, p 860.

[23] See Christopher H. Sterling and John M. Kittross. Stay Tuned: A Concise History of American Broadcasting. Belmont, CA: Wadsworth Publishing Company, 1978, pp 122-123. Also Broadcasting, specifically 3-15-35, p 18; 4-15-35, p 11; 5-1-35, p 7; 7-15-35, p 15; 9-15-35, p 12; 1-1-36, p 12; 2-15-36, p 16; 5-1-36, p 9; 1-1-37, p 44.

[24] 62 ABA Report, 860.

[25] 61 ABA Report, 801.

[26] Hallam, "Object Lessons," p 463.

[27] 63 ABA Report, 385.

[28] Broadcasting (October 1, 1937) p 20.

[29] Editor and Publisher (April 29, 1939) p 21.

[30] 62 ABA Report, p 863. An interesting sidelight reflective of the times is the agreement of all the gentlemen on the Committee of the need to show concern for certain trial participants: "Women and children whose presence at a trial is compelled are often humiliated by the thought that they are accidentally associated with the sordid details of a criminal trial. It seems an unjustifiable addition to their distress that they should be photographed against their will, pictured in the Press, and their personal appearance and clothes made the subject of gossiping comment."

[31] Ibid, pp 1134-1135.

[32] Hallam, "Object Lessons," p 465.

[33] Ibid.

[34] 63 ABA Report, 121.

[35] Editor and Publisher (April 29, 1939) p 21.

[36] Albert E. Blashfield, "The Case of the Controversial Canon," ABA Journal, (May 1962): 431.

[37] Ibid, p 430.

[38] Ibid.

[39] 83 ABA Report 660-662.

[40] Code of Judicial Canon 3(A) 7 (1972).

[41] 107 ABA Report 729. The 1984 Lawyers Manual on Professional Conduct presents the 1982 revision: "A judge should prohibit broadcasting, televising, recording or photographing in courtrooms and areas immediately adjacent thereto during sessions of court, or recesses beetween sessions, except that under rules prescribed by a supervising appellate court or other appropriate authority, a judge may authorize broadcasting, televising, recording, and photographing of judicial proceedings in courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice."

[42] "Summary of TV Cameras in the State Courts," (July 1, 1987). Williamsburg, VA.: National Center for State Courts.

[43] US v Hastings, 704 F.2d 559 (1983).

[44] FED. R. CRIM. P. 53

[45] US v Hastings, at 562. Tom Julin ("The Inevitability of Electronic Media Access to Federal Courts," 4 Detroit College of Law Review 1303, 1983) discusses the implications of Hastings for federal courtroom coverage. See also Carter, T. Barton, "Cameras in the Courtroom: Education or Entertainment?" in When Information Counts: Grading the Media, Ed. Bernard Rubin, Lexington, MA: Lexington Books, 1985. 139-151; Killian, Douglas P., "Propriety of Restrictive Guidelines for Cameras in the Court," 9 Communications and the Law 27 (April, 1987); Lindsey, Richard P., "An Assessment of the Use of Cameras in State and Federal Courts," 18 Georgia Law Review 389 (1984).

[46] News Cameras in the Courtroom: A Free Press-Fair Trial Debate. Norwood, NJ: Ablex Publishing. 1987, p 91.

[47] Editor and Publisher (April 29, 1939) p 104.

Bibliography

Primary Sources

1. ABA: Opinions of the Committee on Professional Ethics and Grievances with the Canons of Professional Ethics Annotated and the Canons of Judicial Ethics Annotated. Chicago: 1957. (Opinion No 67, pp 163-164).
____. 1967 (Opinion No 212, pp 500-501).
____. Committee on Professional Ethics: Informal Opinions. Chicago: 1975. Vols I & II. (Opinion No 950; Opinion 1028 unexamined).
____. Standing Committee on Ethics and Professional Responsibility: Formal and Informal Ethics Opinions. Chicago: 1985 (Canon 3, pp 553-557).
____. Recent Ethics Opinions. (Formal through 5-7-85; Informal through 9-5-84).

2. ABA Reports, Chicago. 57: 1932. (Discussion) Report of Committee on Professional Ethics and Grievances, pp 147-149.
61: 1936. Report of the Special Committee on Cooperation Between the Press, Radio, and Bar, as to Publicity Interfering with Fair Trial of Judicial and Quasijudicial Proceedings, pp 800-802.
62: 1937. (Discussion). Report of the Special Committee, pp 239-243.
____. Report of the Special Committee, pp 851-866.
____. Canon 35, pp 1134-1135.
63: 1938. (Discussion). Report of the Special Committee, pp 121-124.
____. Report of the Special Committee, pp 382-386.
64: 1939. Report of the Special Committee, pp 299-303.
65: 1940. Report of the Special Committee, pp 229 230.
66: 1941. Report of the Special Committee, p 284.
77: 1952. Report of the Special Committee on Televising and broadcasting Legislative and Judicial proceedings, pp 607-611.
79: 1954. Report of the Standing Committee on Professional Ethics and Grievances, pp 273-274.
80: 1955. Report of the Committee on Public Relations, pp 285-289.
81: 1956. Report of the Committee on Public Relations, pp 306-310.
83: 1958. (Discussion). Revision of Judicial Canon 35, pp 643-669.
____. Report of the Special Bar-Media Conference Committee on Fair Trial-Free Press, pp 790-791.
87: 1962. Report of the Special Committee on Proposed Revision of Canon 35, pp 749-795.
88: 1963. (Discussion). Proposed Revision of Judicial Canon 35, pp 115-118.
____. Report of the Special Committee on Proposed Revision of Canon 35, pp 305-316.
97: 1972. (Discussion). Report of the Special Committee, p 556.
____. Report of the Special Committee on Standards of Judicial Conduct, p 858.
107: 1982. (Discussion). Report of the Standing Committees, pp 649-652.
____. Report of the Special Committees on Association Standards for Criminal Justice, Association Communications, Ethics and Professional Responsibility and Section on Criminal Justice, pp 725-738.

3. ABA: ABA Project on Minimum Standards for Criminal Justice: Standards Relating to Fair Trial and Free Press. Chicago, 1968. section 3.5, pp 25-27.

4. ABA: The Rights of Fair Trial and Free Press: The American Bar Association Standards: An Information Manual for Bar, News Media, Law Enforcement Officers and Courts. Chicago: 1981.

5. ABA: E. Wayne Thode, Reporter's Notes to Code of Judicial Conduct: A Project Sponsored by the ABA and the American Bar Foundation. Chicago: 1973.

6. American Enterprises Institute for Public Policy Research. Fair Trial and Free Press: Paul C. Reardon, Clifton Daniel, Rational Debate Seminars. Washington, DC: 1968.

7. Special Committee on Radio, Television, and the Administration of Justice of the Association of the Bar of the City of New York: Radio, Television, and the Administration of Justice: A Documented Survey of Materials. New York: Columbia Univrersity Press, 1965.

8. Special Committee on Radio, Television, and the Administration of Justice of the Association of the Bar of the City of New York: Freedom of the Press and Fair Trial: Final Report with Recommendations. New York: Columbia University Press, 1967.

Legal Citations

1. Chandler v Florida, 449 US 560 (1981).

2. Estes v Texas, 381 US 532 (1965).

3. In Re Petition of Post-Newsweek Stations, Florida, Inc. for Change in Code of Judicial Conduct, 347 So 2d 409 (Fla., 1979).

4. Sheppard v Maxwell, 384 US 333 (1966).

5. US v Hastings, 704 F.2d 559 (1983).

6. FED. R. CRIM. P. 53.

7. American Bar Association, Code of Judicial Conduct. Canon 3 (A) (7). ABA/BNA Lawyers Manual on Professional Conduct, 1984.

Secondary Sources

1. Barber, Susanna. "History of Cameras in the Courtroom: A Social Scientific Evaluation." PhD Dissertation. Bowling Green State University, Ohio, 1981.

2. _____. News Cameras in the Courtroom: A Free Press-Fair Trial Debate. Norwood, NJ: Ablex Publishing, 1987.

3. Blashfield, Albert E. "The Case of the Controversial Canon." ABA Journal 48 (May, 1962): 429-434.

4. Carter, T. Barton. "Cameras in the Courtroom: Education or Entertainment?" in When Information Counts: Grading the Media. Ed. Bernard Rubin, Lexington, MA: Lexington Books, 1985, pp 139-151.

5. Costa, Joseph. "Cameras in the Courtroom: A Position Paper." Journalism/Public Relations Research Centre. Ball State University, Muncie, Indiana, 1980.

6. Hallam, Oscar. "Some Object Lessons on Publicity in Criminal Trials." Minnesota Law Review 24 (March 1940): 453-477. Appendix: "Report of Special Committee on Publicity in Criminal Trials," (1935): 477-508.

7. Hodges, William Terrell, and Stagg, C. Lawrence. "Broadcasting and Televising Trials: Fair Trial versus Free Press." University of Florida Law Review, 11 (1958): 87-98.

8. Julin, Tom. "The Inevitability of Electronic Media Access to Federal Courts," 4 Detroit College of Law Review 1303 (1983).

9. Kielbowicz, Richard B. "The Story Behind the Adoption of the Ban on Courtroom Cameras." Judicature. 63 (June/July, 1979): 14-23.

10. Killian. Douglas P. "Propriety of Restrictive Guidelines for Cameras in the Court," 9 Communications and the Law 27 (April, 1987).

11. Lindsey, Richard P. "An Assessment of the Use of Cameras in State and Federal Courts" 18 Georgia Law Review 389 (1984).

12. Sunderland, Edson R. History of the American Bar Association and its Work. With a Concluding Chapter on Scope and Correlation of Work and Its Program by William J. Jameson. Ann Arbor?: Reginald Heber Smith, 1953.

13. "Summary of TV Cameras in the State Courts," (July 1, 1987). Williamsburg, VA: National Center for State Courts.