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TELEVISION AND BROADCASTING TRIALS

*Paul J. Yesawich, Jr.**

The novelty of television is beginning to wear thin but in the wake of its birth flows a renewed interest in an unceasing conflict between the press and the courts. Its potential utility as a medium of information and education has many interesting facets, not the least of which is its use to transmit to the public scenes of legislative investigations and trials.

The full impact of television, as an appendage of a legislative inquiry, was demonstrated by the Special Senate Committee to Investigate Organized Crime in Interstate Commerce. Its use by that Committee has provoked a seemingly endless stream of comment both from the press and the bar.¹ In the Senate, its use was the subject of a spirited debate² while in the House of Representatives it was the precursor of a ruling by Speaker Rayburn which bars television and radio reporting

* See Contributor's Section, Masthead, p. 718, for biographical data.

¹ *E.g.*, Gossett, *Justice and TV*, 38 A.B.A.J. 15 (1952); Arnold, *Mob Justice and Television*, 12 FED. COM. B.J. 4 (1951); Taylor, *The Issue Is Not TV, But Fair Play*, 12 FED. COM. B.J. 10 (1951); Charnley, *Should Courtroom Proceedings Be Broadcast?*, 11 FED. COM. B.J. 64 (1950); *State Legislation Affecting Radio and Television in 1949*, 10 FED. COM. B.J. 208 (1949); 10 See Magazine 28 (November 1951); Klots, *Trial by Television*, 203 Harper's 90 (October 1951); Time, April 16, 1951, p. 57, col. 1; U.S. News & World Report, March 30, 1951, p. 60, col. 1; N.Y. Times, March 7, 1952, p. 12, col. 2; N.Y. Times, March 3, 1952, p. 28, col. 6; N.Y. Times, March 2, 1952, p. 2E, col. 8, and p. 7E, col. 5; N.Y. Times, March 1, 1952, p. 13, col. 4, p. 14, col. 7, and p. 32, col. 8; N.Y. Times, Feb. 29, 1952, p. 32, col. 8; N.Y. Times, Feb. 28, 1952, p. 22, col. 2; N.Y. Times, Feb. 26, 1952, p. 1, col. 2, p. 1, col. 4, and p. 14, col. 2; N.Y. Times, Feb. 22, 1952, p. 27, col. 1; N.Y. L.J., Feb. 6, 1952, p. 504, col. 2; N.Y. Times, Jan. 27, 1952, p. 10E, col. 3; N.Y. Herald Tribune, Jan. 26, 1952, p. 7, col. 6; N.Y. Herald Tribune, Jan. 16, 1952, p. 12, col. 3; N.Y. Times Magazine, Jan. 13, 1952, p. 12; N.Y. Times, Jan. 12, 1952, p. 15, col. 5; N.Y. Herald Tribune, Dec. 21, 1951, p. 21, col. 1; N.Y. Times, Dec. 19, 1951, p. 48, col. 1; N.Y. Times, Sept. 20, 1951, p. 28, col. 7; N.Y. Herald Tribune, Sept. 12, 1951, p. 4, col. 3; N.Y. Herald Tribune, Sept. 7, 1951, p. 17, col. 3; N.Y. Times, Sept. 1, 1951, p. 7, col. 2; N.Y. Herald Tribune, Aug. 12, 1951, p. 4, col. 1; N.Y. Times, Aug. 11, 1951, p. 1, col. 2; N.Y. Times, June 24, 1951, a series of articles begun by Jack Gould; N.Y. Times, June 19, 1951, p. 31, col. 5; The Washington Post, June 9, 1951, p. 6, col. 1; The Detroit News, April 1, 1951, p. 15, col. 1; The N.Y. Post, March 27, 1951, a series of articles begun by Max Lerner; THE AMERICAN BAR ASSOCIATION: REPORT OF COMMITTEE ON TELEVISION AND BROADCASTING LEGISLATIVE AND JUDICIAL PROCEEDINGS (February 11, 1952) and 62 REPORTS OF AMERICAN BAR ASSOCIATION 851 (1937); THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK: REPORT ON RADIO AND TELEVISION BROADCASTING OF HEARINGS OF CONGRESSIONAL INVESTIGATIONS (January 15, 1952) and REPORT ON CONGRESSIONAL INVESTIGATIONS (1948).

² 97 CONG. REC. 9976 *et seq.* (August 10, 1951). The diversity of Congressional opinion on this subject is also reflected in various bills and resolutions. Compare for example H.R. 1017, 82d Cong., 1st Sess. (1951) with S.C. RES. 44, 82d Cong., 1st Sess. (1951).

of House Committee hearings.³ In the state legislatures, the phenomenon of a televised legislative investigation has evoked little responsible action other than in California where the legislature provided that no hearing held by a special crime study commission would be televised or broadcast by radio.⁴

The problems inherent in the televising of congressional inquisitorial investigations are beyond the bounds of this paper. In passing, however, it is well to note that unlike judicial proceedings there may be, in some instances, a legitimate need for the legislature in its informing function to educate and alert the public by placing before it, through the medium

³ See N. Y. Times, February 26, 1952, p. 1, col. 4 and N. Y. Herald Tribune, February 26, 1952, p. 4, col. 3. Mr. Rayburn's ruling applied to newsreels and motion pictures of a hearing for later showing by television as well as to tape recordings for later broadcasts but still photographs were excluded from the ban.

⁴ Statutes and Amendments to the Code of California 1951, Vol. 1, c. 902, p. 2428. State legislative activity in the field of television has generally been of a more prosaic character although many of the states have concerned themselves with the problem of defamation. See the following: ALA. CODE ANN. tit. 7 § 370, tit. 36, § 58(35) (Supp. 1951); ARIZ. CODE ANN. § 66-182c (Supp. 1951); CAL. CIVIL CODE § 48.5 (Deering 1949), 1 Business and Professions Code § 7234 (Deering 1951), CCH ADVANCE SESS. LAWS—Cal. 1951; COLO. STAT. ANN. c. 138 B, § 1, c. 16, § 233 (1935); CONN. REV. GEN. STAT. § 498b (Supp. 1951); FLA. STAT. ANN. § 770.04 (Supp. 1951), CCH ADVANCE SESS. LAWS—Fla. 1951; GA. CODE ANN. §§ 105-712 to 105-714 (Supp. 1951); ILL. ANN. STAT. c. 38, §§ 404.1 to 404.4 (Smith-Hurd 1936), CCH ADVANCE SESS. LAWS—Ill. 1951; IND. ANN. STAT. § 2-518, § 2-519, § 2-1733, §§ 47-2239 to 47-2240, § 64-750 (Burns 1933); KAN. GEN. STAT. ANN. § 60-746a (Cum. Supp. 1949); LA. REV. STAT. tit. 14, §§ 50 and 203, tit. 33, § 4161, tit. 45 §§ 1351 to 1354 (1950); Me. Laws 1949, c. 12, § 33A, c. 134, § 31A, CCH ADVANCE SESS. LAWS—Me. 1951; Md. Laws 1949, c. 137, § 226A, c. 614, § 1; MASS. ANN. LAWS c. 90, § 13 (1947), CCH ADVANCE SESS. LAWS—Mass. 1951; MICH. STAT. ANN. § 4.156(1), §§ 27.1405 to 27.1406, § 28.776(1) (1937); MINN. STAT. ANN. § 484.19, § 544.043 (Supp. 1951); MONT. REV. CODE ANN. § 93-601-902, § 94-2807 (1947); NEB. REV. STAT. §§ 86-601 to 86-603 (Supp. 1949), CCH ADVANCE SESS. LAWS—Neb. 1951; CCH ADVANCE SESS. LAWS—Nev. 1951; N.H. Laws 1949, c. 45, § 6A, CCH ADVANCE SESS. LAWS—N.H. 1951; N.J. STAT. ANN. § 5:2-12, § 54:40A-44 (1940), N.J. SESSION LAW SERVICE 1951, No. 3, p. 244; N.Y. VEHICLE AND TRAFFIC LAW § 15(24), N.Y. PENAL CODE § 485, 485-A, N.Y. UNCONSOLIDATED LAWS § 9127, N.Y. MULTIPLE DWELLING LAW § 62; N.C. GEN. STAT. ANN. § 20-136.1, §§ 143 to 274 (1943), N.C. GEN. STAT. ANN. §§ 99-1, 99-2, 99-5 (1950); OHIO GEN. CODE ANN. § 12600-2 (Page Supp. 1951), CCH ADVANCE SESS. LAWS—Ohio 1951; OKLA. STAT. ANN. tit. 47, § 147.1, 147.2 (1950), CCH ADVANCE SESS. LAWS—Okla. 1951; ORE. COMP. LAWS ANN. § 1-909a (1940); PA. STAT. ANN. tit. 18, § 4413.1, tit. 47, § 744-602(14), tit. 75, § 403c (Purdon 1940); R.I. Acts and Resolves 1950 c. 2611, p. 729, R.I. Acts and Resolves 1949 c. 2298, p. 437; S.D. Laws 1949 c. 206, pp. 245, 250; TEX. REV. CIVIL STAT. ANN. art. 70471, § ½ (Vernon 1951), TEX. PEN. CODE ANN. art. 667-24a, § 1 (Vernon 1951), TEX. ANN. STAT. SERVICE, NEW ELECTION CODE art. 246 (Vernon 1952); UTAH CODE ANN. § 104-11-13 (1943); Laws of Vt. 1949, No. 248, p. 227; VA. CODE ANN. § 8-632.1, § 46-219.1, §§ 58-266.1 to 58-266.3 (1950); WASH. REV. STAT. ANN. § 6360-98d (Remington Supp. 1949); W. VA. CODE ANN. § 1721 (446) (42) (1949); WISC. STAT. § 12.14, § 12.15, § 85.34 (4), § 348.412 (1949), CCH ADVANCE SESS. LAWS—Wisc. 1951; WYO. COMP. STAT. ANN. §§ 3-7901 to 3-7903 (1945).

of television, information uncovered during legislative investigations. Public legislative hearings, frequently the forerunners of significant legislation, often stimulate informed civic interest and expression on controversial legislation which is helpful to the legislators as well as the country as a whole. This educational or informational need, nevertheless, must be carefully weighed against the scope and immediacy with which television can circulate injury to the reputation and property of those persons drawn even incidentally within the compass of the investigations. The balance of interests becomes less acute when interrogating legislators succumb to an unfortunate temptation to appear in the combined function of prosecutors and judges. As the legislators yield, the investigation takes on the aspect of a Grand Jury proceeding or is converted into a trial without regard for those rights, limited though they may be, of the attending witnesses.⁵ The ensuing injury to these witnesses, which so often occurs, outweighs the necessity for informed public opinion.

But whatever justification there may be for televising legislative inquiries,⁶ there is little or no justification for televising trials. The telecasters' and broadcasters' prevailing desire to publicize trials by audio-visual or sound registering devices is a continued extension of a recurring problem which has never been satisfactorily resolved. The press, zealously guarding its freedom of expression, and the bar, safeguarding the integrity of the court and the rights of the participants at trials, have been unable to agree on the role of the press and radio in criminal trials.⁷ What little experience there is to draw upon indicates a necessity for the containment of the press within its proper sphere.

⁵ Judge Samuel S. Leibowitz, speaking at the Yale Law School said of the recent televised congressional investigations that:

many witnesses . . . were in a very real sense defendants before the bar of public opinion . . . The witnesses were defending their actions and accounting for their conduct just as certainly as if they were being tried upon indictments. And they were doing so before a jury of literally millions of their peers. (March 20, 1951).

⁶ See the MINORITY REPORT OF THE COMMITTEE ON THE BILL OF RIGHTS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK ON RADIO AND TELEVISION BROADCASTING OF HEARINGS OF CONGRESSIONAL INVESTIGATIONS (January 15, 1952). Even Senator Kefauver, an understandable exponent of television, is opposed to television in the courts. The Senator has stated his opposition on the record:

The public does not get any particular educational value from a [broadcast or televised] court proceeding. I have a great deal of doubt as to whether or not the use of radio and television broadcasting ought to be used in court proceedings. I would feel that they should not be. 97 CONG. REC. 10001 (August 10, 1951)

⁷ REPORT OF THE SPECIAL COMMITTEE ON COOPERATION BETWEEN PRESS, RADIO AND BAR, AS TO PUBLICITY INTERFERING WITH FAIR TRIAL OF JUDICIAL AND QUASI-JUDICIAL PROCEEDINGS. 62 REPORTS OF AMERICAN BAR ASSOCIATION 851 (1937). For an excellent collection of materials on the responsibility of the press during pending litigation see Vol. 6, THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 429 (December 1951).

The possible intrusion of television cameras into the courtroom is no longer in the region of speculation. Telecasters have already invaded the courts, with relative impunity, to transmit to the public scenes of murder trials. In one reported instance the court although assuming "that it was improper to allow the taking of news photographs or televising of scenes in the courtroom" manifested that this impropriety unaccompanied by some other deficiency in the proceedings is not violative of the requirement of a fair trial.⁸ Unless a sharper judicial reprimand than this is forthcoming, there is little reason to expect that telecasters will, in the future, burden themselves with restraint, especially in the presence of the *cause celebre* or a sordid murder trial.

Television, because of its newness, provides little precedent helpful in restricting the enlivened propensity for ever-increasing trial publicity. Yet its hybrid character lends itself readily to the principles applied on those occasions when the courts have been required to contend with the presence of the enterprising radio broadcaster or photographer. Radio broadcasts and photographs of judicial proceedings, in fact, are not infrequent. It is sometimes asserted that the right to employ these devices during the proceedings is an integral part of the freedom of the press.⁹ Telecasters, like broadcasters and news photographers, stressing their capacity as representatives of the press will urge that they "have a right to attend and report trials of persons accused of crime, which are public proceedings, and that photographic portrayals of the trial scenes, if obtained without disturbance, are as legally permissible as verbal descriptions."¹⁰

While criminal trials are public proceedings it is doubtful whether the public has anything akin to a right of attendance at such trials.¹¹ The Sixth Amendment grants to the accused the privilege of a public

⁸ *People v. Stroble*, 36 Cal. 2d 615, 226 P.2d 330 (1951), *aff'd*, 12 CCH U.S. SUP. CT. BULL. 879 (1952). But note the dissenting opinion of Frankfurter, J., at page 895. There have been other instances, although unreported, in which judicial proceedings have been televised. See Charnley, *Should Courtroom Proceedings Be Broadcast?* 11 FED. COM. B. J. 64 (1950).

⁹ *Asbury Park Press, Inc. v. City of Asbury Park*, 20 U.S.L. WEEK 2154 (N. J., October 23, 1951); *United States v. Paramount Pictures*, 334 U.S. 131, 166 (1948).

¹⁰ *Ex parte Sturm*, 152 Md. 114, 136 Atl. 312, 315 (1927); Noted, 12 CORNELL L.Q. 374 (1927); Also discussed in THAYER, *LEGAL CONTROL OF THE PRESS* 423 *et seq.* (1944).

¹¹ *Cf. Dawson, Broadcast Trials? Yes*, CASE AND COMMENT (Nov. 1937) at page 8 *et seq.*, where the author writes:

The public itself in democratic courts has acquired something in the nature of a vested interest in criminal trials. The rule that such cases should be tried in public did not originate out of any concern for the accused . . . the right of the accused to a public trial is not mentioned either in the Magna Charta or in the English Bill of Rights. It seems to have developed as a by-product of the publicity naturally attendant on trial by jury. . . .

trial, but there is no comparable constitutional grant to the public making their attendance mandatory upon the court or the parties. It seems rather that the requirement of a public trial was created for the benefit of the accused, so that the public might see that he was fairly dealt with and not unjustly condemned.¹² Its object was to insure the accused from the corrupt practices and miscarriages of justice perpetrated by those secret tribunals which in the past, as well as in certain corners of the world today, have been so effective as instruments of oppression.¹³

Since a public trial is the accused's privilege and not the right of the pruriently curious, the alleged need for the attendance of the public or its information media is dissipated when the accused declines to exercise this privilege. Consequently, if the accused is willing to place his confidence in the judiciary and in counsel and if he is willing to waive his constitutional privilege,¹⁴ he should be allowed to exclude the intrusion of the public and its information media since their reason for admission is based on the then non-existent necessity of his protection. The intrinsic difficulty in this approach is an understandable reluctance on the part of the courts to override even a vague constitutional right, especially when that right is one which is presumably rooted in the protective desire of the public generally to secure the impartial administration of justice. But this reluctance can be dispelled by the fact that the requirement of a public trial was created and satisfied when there were no broadcasters or telecasters¹⁵ and few newspapers. Trials have been public from antiquity without television and they will be no less public today if television is denied access to the courts.

Then, too, the word "public" is a flexible one with an elasticity of definitions best illustrated by those instances where the courts preclude from the courtroom a disturbing public.¹⁶ Extended to its logical and ridiculous extreme, it might necessitate the construction of auditoriums and amphitheatres for judicial purposes, or as Thurman Arnold has

¹² It may be argued that the very existence of the accused's constitutional privilege to a public trial implicitly incorporates the proposition that private trials are acceptable unless the accused invokes his privilege.

¹³ 1 COOLEY'S CONSTITUTIONAL LIMITATIONS, c. 10, p. 647 (8th ed. 1927); 1 TIEDEMAN, STATE & FEDERAL CONTROL OF PERSONS AND PROPERTY 104-106 (1900); 2 TUCKER, ON THE CONSTITUTION 679 (1899).

¹⁴ *United States v. Sorrentino*, 175 F.2d 721 (3d Cir. 1949), cert. denied, 338 U.S. 868, rehearing denied, 338 U.S. 896 (1949); 14 AM. JUR. § 143, p. 869 (1938); 23 C.J.S. § 963, p. 289 (1940).

¹⁵ Radin, *The Right to a Public Trial*, 6 TEMP. L. Q. 381 (1932); Note, 36 MICH. L. REV. 1386 (1938).

¹⁶ Note, 156 A.L.R. 265 (1945).

written of a trial like that of Alger Hiss it might require that the proceedings be transferred to Yankee Stadium.¹⁷

Whether the telecasters can bring their medium within the purview of the term "public" as it incorporates the press is an issue often contemplated. To some, television like motion pictures, is a vehicle of entertainment and not a news agency.¹⁸ Such was the intimation in *Earle C. Anthony, Inc. v. Morrison* where the court said:

It may be some day that broadcasting and television may be considered a vested right of news gathering agencies but the flexibility of my mind cannot comprehend that such unusual privileges have thus far jelled into a right.¹⁹

An auxiliary prop for this position, and one not to be easily discounted, is the ability of an astute television cameraman to heighten the dramatic intensity of a trial or to effectuate a commentary on the character of witnesses or parties by his camera direction, all of which indicates that the transmitted effect can be primarily one of entertainment, depending upon the whim of a cameraman.²⁰

On the other hand telecasters may take comfort in the view that since television gives a pictorial representation of events as they occur it more nearly approaches a news agency than entertainment.²¹ To them television or "electronic journalism" is the most efficient form of reporting and

¹⁷ Arnold, *Mob Justice and Television*, 12 FED. COMM. B. J. 4 (1951). A more realistic approach was taken in *People v. Stanley*, 33 Cal. App. 624, 166 Pac. 596, 598 (1917) where the court said:

The provision of the Constitution with respect to the right of accused persons to a public trial must be construed in a reasonable sense in view of the object to be subserved thereby, and is not to be interpreted as intended that the trial of criminal cases shall be held in places so large or so open as that the entire body of the public of a city or region may attend it if they so desire. . . .

¹⁸ *People v. Munday*, 280 Ill. 32, 117 N.E. 286 (117), *cert. denied*, 254 U.S. 638 (1920); *Joseph Burstyn, Inc. v. Wilson*, 303 N. Y. 242, 101 N. E. 2d 665 (1951), *rev'd*, 20 U.S.L. WEEK 4329 (U.S. May 27, 1952); Note, 37 VA. L. REV. 335 (1951).

¹⁹ 83 F. Supp. 494 (S. D. Cal. 1948), *aff'd mem.*, 173 F.2d 897, Case 2 (9th Cir. 1949), *cert. denied*, 338 U.S. 819 (1949).

²⁰ *Printers Ink*, Vol. 235, pp. 933, 935 (April 20, 1951). Perhaps too, the use of television in this manner is somewhat analogous to those instances where the courts have found the open and public shadowing of a person by private detectives an actionable wrong. *Schultz v. Frankfort Marine Accident & Plate G. Co.*, 151 Wis. 537, 139 N.W. 386 (1913); Note, 138 A.L.R. 22, 93 (1942). See also the language in *Monson v. Tussauds Ltd.*, 1 Q.B. 671 (1894) and the suggestions of Mr. Solinger in *Fortune*, pp. 161, 162 (December, 1948).

²¹ See the conclusions of law in *Dumont v. Carroll*, 86 F. Supp. 813 (E.D. Pa. 1949), *aff'd*, 184 F.2d 153 (3d Cir. 1950), *cert. denied*, 340 U.S. 929 (1951), set forth in the MINORITY REPORT OF THE COMMITTEE ON THE BILL OF RIGHTS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK ON RADIO AND TELEVISION BROADCASTING OF HEARINGS OF CONGRESSIONAL INVESTIGATIONS (January 15, 1952).

is the epitome of press representation. To them the Supreme Court has extended the imprimatur of its dictum declaring:

We have no doubt that motion pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment.²²

But it is the function of a trial which is determinative of the constraint which should be imposed upon the telecaster. A trial should consist only of a sober investigation of the matters in issue.²³ It is a central part of our judicial machinery and its undisturbed functioning is of the most solemn concern to the interested parties. It is a happening not to be lightly regarded as a means of entertainment or in any sense a festive occasion.²⁴ Yet, cameramen and radio operators often beset the courts for an admittance, which is frequently bestowed, notwithstanding their tendency to convert a courtroom into a picture gallery or the trial of a case into a show. The use of television, radio or similar apparatus during a trial distracts from the singular purpose of the courts and subverts the dignity of their proceedings.

The introduction into the courtroom of cameras and microphones and the accompanying necessity that the participants in the proceedings consciously adapt themselves to these devices²⁵ is a serious departure from

²² *United States v. Paramount Pictures*, 334 U.S. 131, 166 (1948). Because the *Paramount* case was an antitrust action and freedom of speech was not involved, the decision in *Asbury Park Press, Inc. v. City of Asbury Park*, 20 U.S.L. WEEK 2154 (N.J., October 23, 1951) is more in point. There the Superior Court of New Jersey ordered the City of Asbury Park to allow a radio station to broadcast public hearings on a proposed city tax. The court in its decision said:

I find as a fact . . . that the exclusion of a radio news broadcast of the public hearing tomorrow would be a violation of the Federal and State Constitutional rights guaranteed to the press. I find further that radio news broadcasting is, by definition of this court "press" under the Constitutional provisions.

²³ In a broadcast over station WNYC, New York City, the Honorable Simon H. Rifkind said:

The function of a trial is not to inform, to educate, to edify, or entertain the public. The function of trials in our system of justice is to maintain the peace without violence, by affording people a forum where they can peacefully adjust their differences. The function of trials is to settle controversies so that the people can go forward and attend their business and go on to the next proposition. The function of trials is to resolve issues between citizens, to resolve controversies between citizens and their government—that is the end product of the judicial trial. We say—in an overall phrase—we say it is intended to promote justice. (June 18, 1951).

²⁴ *Bisignano v. Municipal Court of Des Moines*, 237 Ia. 895, 23 N.W.2d 523 (1946), *cert. denied*, 330 U.S. 818 (1946); *People v. Munday*, 280 Ill. 32, 117 N.E. 286 (1917), *cert. denied*, 254 U.S. 638 (1920).

²⁵ The Special Committee on Cooperation between Press, Radio and Bar of the American Bar Association reported:

It is, however, quite clear that all mechanisms which require the participants in a trial consciously to adapt themselves to the exigencies of recording and reproducing devices distract attention which ought to be concentrated upon the single object of promoting

those rules which have been fashioned by experience to insure the orderly and serious quest for truth. Unless there is some real benefit to the participants in having a trial televised such a departure must be condemned. The advantages, however, of a telecast trial are out-sized by the disadvantages. For example, the suggestion that the quality of testimony will necessarily be improved²⁶ with increased publicity is somewhat unrealistic in view of the not uncommon tendency for the criminally inclined to dramatize or romanticize their lives.²⁷ And again, while the realization that a vast unseen audience is present may arouse in some a conscientious awareness of their responsibilities, in others it may stimulate a demoralizing insistence for histrionics. It is difficult to conceive how a calm, deliberate and unemotional inquiry can be had when the courtroom is filled with a confusion of microphones and cameras and the prevailing sense of an invisible gallery.

Nor is the education of the public a function or a salutary by-product of a televised trial.²⁸ The experience of radio and photography cases has shown, and certain of our current periodicals persist in showing, that the more sordid crimes are given the most expansive coverage. It is the gruesome murder or the confidential divorce which is most likely to be considered readily entertaining to a morbidly curious segment of the viewing public.²⁹ To televise such proceedings is merely to aid in

justice. Experience has quite clearly demonstrated that even in the much simpler matter of public speaking, radio addresses and addresses to an audience which confronts the speaker are very different things requiring different techniques. Quite obviously the attention of lawyers and witnesses ought to be concentrated upon the jury who are to determine the tragic fact of guilt or innocence and ought not to be divided between the jury and an air audience who for the most part have no real interest in the proceedings but are listening in to get a thrill out of a pitiful and sordid tale. It is too much to hope that lawyers and witnesses can do their full duty by the court and at the same time be effective factors in the highly specialized art of broadcast drama.

62 REPORTS OF AMERICAN BAR ASSOCIATION 851, 864 (1937). See also *People v. Ulrich*, 376 Ill. 461, 34 N.E. 2d 393 (1941) where a photographer had the jury arrange itself in a special position so that they might be photographed; and Professor Charnley's article in 11 FED. COM. B.J. 64, 68 where he reports that a judge delayed a broadcast of a motion two minutes so that program changes could be made to accommodate the broadcast. For an indication of how other courts may react to the necessity of gearing their proceedings so as to conserve time for a radio broadcast or telecast see *Brody v. Owen*, 18 N.Y.S. 2d 28, 259 App. Div. 720 (2d Dep't 1940), *In re Blake*, 17 N.Y.S. 2d 496 (Sup. Ct. Kings County 1939); 26 A.B.A.J. 185 (1940), and the opinion of the Committee on Professional Ethics and Grievances in 22 A.B.A.J. 836, 837 (1936).

²⁶ 6 WIGMORE, EVIDENCE § 1834 *et seq.*, p. 332 (3d ed. 1940), and BENTHAM: RATIONALE OF JUDICIAL EVIDENCE, c. 10, §§ 2 and 3, pp. 522 *et seq.*

²⁷ Note, 17 ORE. L. REV. 139 (1938). It is not unusual these days to read in the daily papers that people are vying for the opportunity to publish the memoirs of known criminals.

²⁸ Radin, *The Right To A Public Trial*, 6 TEMP. L.Q. 381, 384 (1932).

²⁹ *People v. Stroble*, 36 Cal. 2d 615, 226 P. 2d 330 (1951), *aff'd*, CCH U.S. SUP. CT. BULL. 879 (1952) (telecast of murder trial); *Irwin v. Ashurst*, 158 Ore. 61, 74 P. 2d 1127 (1938)

the dissemination of that undesirable publicity which may well foster the corruption of an already wavering public morality.

From the viewpoint of the accused during the trial, to be under the surveillance of the selective yet ubiquitous eye of a television camera, is, to say the least, a mentally discomfiting imposition. The pressure of "mike fright" and "stage fright" will unduly hamper the testimony of many witnesses already under a severe mental and physical strain.³⁰ To be brought within the precincts of a court to stand trial is an ordeal in itself and there is neither need nor right to intensify this humiliation by a compulsory submission to a telecast. The freedom of the press grants no such license, for the liberty of the press does not include the privilege of taking advantage of a person accused of crime to photograph his face and figure against his will.³¹ The agitation of the accused is keen enough without imposing upon him the additional burden of a psychological torture not unlike the third degree.³² It is unjust to demand

(broadcast of murder trial); *Earle C. Anthony, Inc. v. Morrison*, 83 F.Supp. 494 (S.D. Cal. 1948), *aff'd, mem.*, 173 F.2d 897, case 2 (9th Cir. 1949), *cert. denied*, 338 U.S. 819 (1949) (broadcast of murder trial); *Ex Parte Sturm*, 152 Md. 114, 136 Atl. 312 (1927) (photographs during murder trial); *Berg v. Minneapolis Star & Tribune Co.*, 79 F. Supp. 957 (D. Minn. 1948) (photographs during divorce proceedings); *Higb v. State*, 197 Ark. 681, 12 S.W.2d 24 (1938) (photographs during manslaughter trial). Motion pictures were taken of the Nuremberg trials. Taylor, *The Issue Is Not TV, But Fair Play*, 12 FED. COM. B. J. 10, 14 (1951). Probably the most disgraceful illustration of the abnormal coverage which can be given to a trial is the Bruno Hauptmann case. During the course of the proceedings there were present "141 newspaper reporters and photographers, 125 telegraph operators and 40 messengers." Robbins, *The Hauptmann Trial In the Light Of English Criminal Procedure*, 21 A. B. A. J. 301, 304 (1935). See also the remarks of Senators Welker and Wiley on this subject in 97 CONG. REC. 9977, 9986 (August 10, 1951).

³⁰ In the recent congressional committee investigations many of the witnesses, objecting in part, to being televised read statements not unlike the following: "The presence of all these lights, cameras, microphones and recording devices and all the other television and radio and newsreel equipment subjects me to severe mental and physical strain so that I am unable to think clearly; and, plus the heat generated by the lights and the general confusion, makes this hearing as to me, a third degree." *Washington Evening Star*, Jan. 14, 1952, p. 4. See also *Hearings Before the Special Committee to Investigate Organized Crime*, SEN. REP. Nos. 208, 209, 82d Cong.; 1st Sess. pp. 3 and 5 (1951). The latter Reports accompanied Senate Resolutions 119 and 120 which cited two individuals for contempt for refusing to testify before the Kefauver Committee unless the television, radio and newsreel apparatus was removed.

³¹ *Ex Parte Sturm*, 152 Md. 114, 136 Atl. 312, 314 (1927).

³² Mr. Klots writing in *Harper's Magazine* draws a graphic picture of the psychological torment in which the accused is placed when testifying under the gaze of television:

First of all, the witness suffers a psychological ordeal which must make it impossible for him to give accurate and careful testimony, however disposed he may be to do so. Many of us suffer stage fright when merely confronted with a microphone. As for television, few of us are movie stars. The very thought that millions of people are watching and observing every expression and gesture would induce in many of us a state of panic. Everyone is naturally at a disadvantage on the witness stand and

of an accused standing trial that he respond and be expected to be judged on his response when his composure is so taxed and he is unable to appear to the best of his ability.

These are the fundamental reasons for disallowing telecasts of trials. In addition there are still others which, though not to the core of this objectionable practice, well serve to illustrate its potential evils. First, there is a possible danger in the fact that the proceedings may be only intermittently viewed by the public. A fair impression of the progress of a trial cannot be obtained from excerpts. Such a view of the proceedings may create a distorted picture in the eyes of the viewers and while misconceptions of trials and trial practice are not unusual in press reporting that is little justification for compounding the distortions by the use of television. Also, of newspaper reporting of trials it should be remembered that the more responsible journals report and edit court proceedings with a laudable restraint and understanding which only seasoned reporters can contribute. In a telecast, the camera is the all-powerful weapon with only limited editing and interpreting opportunities available, with the result that often truth, lies and suspicion in a jumbled mass, with nothing sifted and nothing proved, are flashed across the screen. The effect of intermittent viewing of such a presentation may well be a "distorted impression of the facts [with the] consequent prejudgment of the witness by the viewers without regard to the legal presumption of innocence to which the witness is entitled."³³

Secondly, it has been suggested that a telecast or broadcast of a trial will encourage so many persons to form an opinion on the issues that it would become difficult to select an impartial jury in the event that the first trial did not reach a verdict.³⁴ While this objection has as yet not reached the stature of gravity which it might, there lies within it another

automatically becomes self-conscious and easily confused. When we add the heat and glare of klieg lights, cameras, microphones, and all the other paraphernalia that usually go with television and radio broadcasting, the experience becomes for most people a species of torture. Indeed it is much too close to the familiar methods that totalitarian rulers use to elicit "facts." The analogy is an ugly one but it is inescapable. In most instances the embarrassment and confusion which confound the witness in such surroundings contribute not to the search for truth but to a distorted and wholly inaccurate picture.

203 Harpers 90, 91 (October 1951).

³³ REPORT OF SPECIAL COMMITTEE OF AMERICAN BAR ASSOCIATION ON TELEVISIONING AND BROADCASTING LEGISLATIVE AND JUDICIAL PROCEEDINGS 5 (February 11, 1952); Taylor, *The Issue Is Not TV, But Fair Play*, 12 FED. COM. B. J. 10 (1951).

³⁴ Compare Note, 17 ORE. L. REV. 139 (1938) with *Baltimore Radio Show v. State*, 67 A. 2d 497 (Md. 1949), cert. denied, 338 U.S. 912 (1949), noted in 63 HARV. L. REV. 840 (1950).

time-consuming obstruction to prevent a speedy disposition of a trial. Finally, there is the possibility of commercial sponsors for televised trials. With the commercial exploitation of congressional investigations a reality,³⁵ a sponsored telecast of a trial can readily be envisioned. To portions of any community nothing is as appealing as an opportunity for observing the enactment of a living drama, especially if evidence of human depravity is to be revealed. An essaying commercial sponsor is not likely to overlook an event with such a matchless dramatic appeal. To the balance of any community such a state of events would constitute a frontal assault on the principles of fair play for not only is the accused unnecessarily made a spectacle of, but under the gracious auspices of an often not too savory household product he is transformed into an involuntary actor and the court into a prop or setting hardly consonant with its dignity or purpose.

Despite the many compelling reasons for disallowing a telecast of a trial, unless the court exercises its discretion in favor of disallowance, the accused may be helpless to protect himself. It is true that he is graced with a presumption of innocence, but, as already indicated, this presumption may be debilitated when the proceedings are intermittently viewed. The right to privacy, which in recent years has taken on an aura of respectability not previously accorded it, affords him little comfort.

Even if it is assumed that the right to privacy is impliedly recognized within the provisions of the Constitution protecting against unreasonable searches and seizures or against the deprivation of liberty without due process of law,³⁶ the accused's right still yields to the dominant right of the public to information on matters of legitimate public or general interest.³⁷ Trials and the activities of persons involved in trials are considered such legitimate subjects of public interest and thus persons who, even unwillingly come into the public eye as a result of the publi-

³⁵ 97 CONG. REC. 10010 (August 10, 1951); See Magazine 28 (November, 1951); 127 *Colliers* 86 April 28, 1951); 60 U.S. News & World Report 60 (March 30, 1951).

³⁶ Compare *Prudential Ins. Co. v. Cheek*, 259 U.S. 530, 543 (1922) where a majority of the Supreme Court said: "Neither the Fourteenth Amendment nor any other provision of the Constitution of the United States imposes upon the States any restriction about 'freedom of speech' or the 'liberty of silence'; nor, we may add, does it confer any right of privacy upon either persons or corporations," *with* *Pasevich v. New England Life Ins. Co.*, 122 Ga. 190, 50 S.E. 68 (1905); Warren and Brandeis, *The Right of Privacy*, 4 HARV. L. REV. 193, 220 (1890), and the more recent Supreme Court decisions annotated in 14 A.L.R. 2d 750, 755 (1950) and 138 A.L.R. 22, 30 (1942).

³⁷ *Nizer, The Right of Privacy*, 39 MICH. L. REV. 526 (1941); RESTATEMENT, TORTS § 867, comment c (1939).

cized criminal prosecution, are deprived to a certain extent of their right to be let alone.³⁸

There is a rather unusual instance where the right to privacy has been successfully invoked in a somewhat parallel situation. It appears in that unique authority which recognizes to a limited extent at least, that the customary photographing of a person for the purposes of police records constitutes an invasion of the prisoner's right to privacy.³⁹ By accepting this expression, perhaps it then may be successfully argued, in some jurisdictions at least, that if constituted authority can be restrained to the limited publication of an accused's photograph,⁴⁰ then the telecasters with their limitless scope of publication but with the absence of the urgency and necessity upon which police powers are often based, would have even a lesser right, if any, to photograph the accused against his will. But generally, the right of privacy would indeed be a weak reed to rely upon to prevent a telecast or broadcast of a trial.⁴¹

Even though the adverse consequences of excessive publicity for judicial proceedings may be apparent and even though it is clear that during a trial the accused is temporarily rendered unable to protect his own interests from a prying press, nevertheless the courts on occasion have exercised their discretion in favor of telecasts or broadcasts of trials.

³⁸ *Elmhurst v. Pearson*, 153 F.2d 467 (D.C. Cir. 1945); *Smith v. Doss*, 251 Ala. 250, 37 So.2d 118 (1948); *Melvin v. Reid*, 112 Cal. App. 285, 297 Pac. 91 (1931); Note, 15 Mo. L. REV. 48 (1950). But see *Mau v. Rio Grande Oil, Inc.*, 28 F. Supp. 845 (N.D. Cal. 1939) and the criticism of that case in MOSER & LAVINE, *RADIO AND THE LAW* 108 (1947).

³⁹ *Itzkovich v. Whitaker*, 115 La. 479, 39 So. 499 (1905), *aff'd*, 117 La. 708, 42 So. 228 (1906); *Schulman v. Whitaker*, 117 La. 704, 42 So. 227 (1906). This proposition was also considered in *McGovern v. Van Riper*, 137 N.J. Eq. 24, 43 A.2d 514 (1945); *aff'd*, 137 N.J. Eq. 548, 45 A.2d 842 (1946), complaint dismissed on final rehearing, 140 N.J. Eq. 341, 54 A.2d 469 (1947); and *Gow v. Bingham*, 57 Misc. 66, 107 N.Y. Supp. 1011 (Sup. Ct. Kings County 1907).

⁴⁰ *State v. Harris*, 348 Mo. 426, 153 S.W.2d 834 (1941); *Downs v. Swann*, 111 Md. 53, 73 Atl. 653 (1909); 1 TIEDEMAN, *STATE AND FEDERAL CONTROL OF PERSONS AND PROPERTY* 158, 159 (1900).

⁴¹ *Elmhurst v. Shoreham Hotel, et al.*, 58 F. Supp. 484 (D.C. 1945), *aff'd*, 153 F.2d 467 (D.C. Cir. 1945); and *Berg v. Minneapolis Star & Tribune Co.*, 79 F. Supp. 957 (D. Minn. 1948), noted in 22 So. CALIF. L. REV. 320 (1949), and 15 Mo. L. REV. 104 (1950); 41 AM. JUR. § 26, p. 64 (1951).

There may be some prospect for relief in the argument that if a trial is commercially sponsored the telecasters are in effect transmitting the features of the accused, in his plight, for advertising or trade purposes. By so doing it would seem that the telecasters pass beyond their principal function as purveyors of information of matters of public interest and to that extent the accused's right of privacy may be revived. Compare *Feinberg, Recent Developments in the Law of Privacy*, 48 COL. L. REV. 713, 720 (1948).

While there is apparently no right to televise a trial,⁴² a telecast of a trial would not be unlawful *per se*. The Supreme Court of Oregon had an early opportunity to pronounce on this proposition in *Irwin v. Ashurst*. There the court, in dealing with a broadcast of a murder trial which the trial court and counsel had consented to, made this observation:

Undoubtedly there is a diversity of opinion as to the propriety of installing a microphone in the courtroom for the purpose of broadcasting judicial proceedings, especially in cases involving sordid details of crime. This court is not prepared to say that it is unlawful *per se* to install a microphone in a courtroom to report judicial proceedings. The American Bar Association frowns upon such practice. It is a matter for the determination of the trial judge.⁴³

To the accused it is little consolation to learn that although the procedure of broadcasting and televising trials may be discountenanced by the American Bar Association this perverse practice continues to exist. It seems obvious that more than ethical censure is now required to curb a practice which infringes on the basic rights of accused individuals.⁴⁴ There must be a condemnation breeding the extinction of this practice if the accused is to be assured the full protection of his constitutional right to fair play.

The opinion in *Irwin v. Ashurst* provides the accused with no reassurance that his personal sensibilities will be shielded. However, there is some evidence justifying an expectation that judicial discretion may be invoked to exclude television cameras and broadcasting equipment from courtrooms. In *Ex parte Sturm*, the Maryland court, in a well reasoned decision, grappled with the issue of whether a court could prohibit the

⁴² *Earle C. Anthony, Inc. v. Morrison*, 83 F. Supp. 494 (S.D. Cal. 1948), *aff'd, mem.*, 173 F.2d 897, Case 2 (9th Cir. 1949), *cert. denied*, 338 U.S. 819 (1949).

⁴³ 158 Ore. 61, 74 P.2d 1127, 1130 (1938). Although the dissenting judges opinion is not reported, his view was that the broadcasting of trials should be condemned as an unethical practice. Note, 36 MICH. L. REV. 1397, 1401 (1938). See also Note, 36 MICH. L. REV. 1386 (1938).

The disfavor of the American Bar Association alluded to by the court is expressed in Canon 35 of the Canons of Judicial Ethics which provides:

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 court 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.

The Special Committee of the American Bar Association on Televising and Broadcasting Legislative and Judicial Proceedings has recommended that this Canon be amended to include a provision prohibiting a telecast of trials.

⁴⁴ The American Bar Association Committee (*supra* note 43) in its report recommended that if Canon 35 of the Canons of Judicial Ethics was not observed "we would favor buttressing it by legislation." February 11, 1952, p. 12.

use of cameras in a courtroom during the progress of a trial. The court in dismissing an appeal from a contempt judgment said:

The challenge in this case of the court's right to forbid the use of cameras in the courtroom during the progress of the trial presents an issue of vital importance. If such a right should yield to an asserted privilege of the press, the authority and dignity of the courts would be seriously impaired. It is essential to the integrity and independence of judicial tribunals that they shall have the power to enforce their own judgment as to what conduct is incompatible with the proper and orderly course of their procedure. If their discretion should be subordinated to that of a newspaper manager in regard to the use of photographic instruments in the courtroom, it would be difficult to limit the further reduction to which the authority of the courts would be exposed. It would be utterly inconsistent with the position and prerogatives of the judiciary, as a co-ordinate branch of government, to require its submission to the judgment of a non-governmental agency as to a question of proper conduct in the judicial forums.⁴⁵

There are, of course, legitimate boundaries of operation within which the courts and the press can function without friction. The preservation and publication of criminal statistics are to a certain extent desirable. When the press performs this service with an objective bent it satisfies its function and duty, but when it exceeds this service and subordinates objectivity it begins to poach on the exclusive province of the courts and its conduct must be made to conform to a dignity compatible with the proper and orderly administration of the law. Conformity not only can and should be demanded of the press and its media, but it is suggested that when television apparatus is utilized to transmit a *running account* of a trial telecasters are divested of the protective shroud of the First Amendment and lay themselves open not only to a possible right in the accused to restrain the telecast, but also to the necessity of conformity, for they are then bereft of whatever advantages their purported privilege of the press might otherwise have conferred upon them. A distinctive feature of television is its ability to convey an instantaneous and continuing account of an event. There is however some indication "that a running account of an event is not news even though the result

⁴⁵ 152 Md. 114, 136 Atl. 312, 315 (1927); 51 A.L.R. 356 (1927). The trial court in an opening statement said (*id.* at 116, 136 Atl. at 313):

In my judgment it is not compatible with judicial dignity for the dignity of the administration of the law, to allow the courtroom to be used, or the precincts of the court, for the taking of any photographs for moving pictures or the press or any other agency. . . .

For a different appreciation for the relationship between the court and the press see *Ex Parte Foster*, 44 Tex. Cr. R. 423, 426, 71 S.W. 593, 595 (1903), Note, 159 A.L.R. 1379, 1392 (1945).

of the event may be."⁴⁶ Applying this conclusion to the instance of a televised trial, it may well be that the accused as well as the court could restrain the telecast without fear of infringing on the freedom of the press.

However much the practice of televising trials may be impugned and however much the adverse consequences of such a procedure are pressed, the disturbing disparity in the *Irwin* and *Sturm* decisions prevails. That trial courts have and will continue to differ on a matter so essential to a fair trial patently illustrates the necessity for mandatory and uncontradicted guidance. There is thus a need for judicial or legislative reprobation in the form of rules or statutes which will prohibit television cameras, microphones and similar recording or sound registering devices from being operated in or about the courtrooms. Unless the courts are armed with such a mandate they will fall prey to the fear of judicial infringement of the freedom of the press. For, however strongly they may feel about the disturbing presence of television and broadcasting apparatus they will necessarily proceed cautiously before attempting to sit as censors and to interfere with what is said to be the traditional right of the press to print all the printable news which appears in the public records of the courts.⁴⁷

The courts are consequently left in a dilemma, the solution to which they themselves must devise without the aid of impelling precedent. In the absence of a governing rule or statute, the state courts might extricate themselves by assimilating Rule 53 of the Federal Rules of Criminal Procedure. This technique was proposed in *Bisignano v. Municipal Court of Des Moines*.⁴⁸ In that action the petitioner, seeking review of a contempt proceeding, complained that his constitutional rights had been violated by reason of the wiring of the courtroom and subsequent broadcast of the contempt proceedings. While the court did not feel that petitioner's constitutional rights were involved, it disapproved of this form of publicity for court proceedings and said:

Rule 53 of the new Federal Rules of Criminal Procedure forbids the taking of photographs during the progress of judicial proceedings or radio broadcasting of such proceedings from the courtroom. *It is a rule that every court should follow whether federal or otherwise, and in either criminal or civil proceedings.*⁴⁹ (Emphasis added.)

⁴⁶ Solinger, *Unauthorized Uses of Telecasts*, 48 COL. L. REV. 847, 858 (1948).

⁴⁷ *Berg v. Minneapolis Star & Tribune Co.*, 79 F. Supp. 957, 961 (D. Minn. 1948); Note, 14 A.L.R. 2d 750, 754 (1950).

⁴⁸ 237 Ia. 895, 23 N.W.2d 523 (1946), *cert. denied*, 330 U.S. 818 (1946).

⁴⁹ *Id.* at 532. Federal Rule 53 of the Rules of Criminal Procedure (18 U.S.C.A. 35 (1951)) was apparently the result of a number of legal articles and Bar Committee reports

But again in the absence of a governing rule or statute the court may feel inadequately equipped to undertake the exclusion of an officious press. And this was the court's attitude in *Berg v. Minneapolis Star & Tribune Co.*,⁵⁰ wherein a motion for summary judgment was granted the defendant in an action where the defendant, despite plaintiff's protests had published a photograph of the plaintiff taken in the courtroom during a divorce and custody proceeding. The court there stated:

The impertinence of newspaper photographers in taking pictures of persons involved in court proceedings when they are in the courtroom or court buildings may well be condemned as a nuisance and often constitutes an unwarranted interference with the orderly functioning of our courts,⁵¹ but the curbing of such practices must rest with the courts by appropriate rule which will tend to limit such activities, or by the enactment of legislation which might place some reasonable limits upon the assumed privileges of newspaper photographers under such circumstances.⁵²

More than a decade has passed since the *Irwin* and *Sturm* cases focused attention on the courts' predicament and the attempted dilution of its authority to exclusively control the conduct of judicial proceedings. Since then a new medium has been introduced to vex the accused and to amplify the problems, but the legislatures have been slow to respond to the needs of the court and the accused. In some courts, rules forbidding the broadcasting of court proceedings have been adopted.⁵³ Until the very recent past in only two states, Wisconsin and Georgia, had legislative action been taken to prohibit the broadcasting of trials.⁵⁴ Of these the Wisconsin statute was the broadest in application, providing:

dealing with the problem of courtroom photographs and radio broadcasts. The basic objections urged were that such court procedure would sensationalize scandals; reduce trials to theatrical performances lessening respect for the law and its instrumentalities; formulate public opinion on matters to be judged by juries alone; and subject litigants to unnecessary humiliation.

⁵⁰ 79 F. Supp. 957 (D. Minn. 1948).

⁵¹ The court in *In Re Seed*, 140 Misc. 681, 251 N.Y. Supp. 615 (1931), a contempt action, felt that a reporter's use of an explosive flash bulb while photographing, in the courthouse, prisoners being conducted into a courtroom, disturbed the functioning of the court.

⁵² 79 F. Supp. 957, 962 (D. Minn. 1948).

⁵³ A number of the Federal District Courts, by rule, prohibit the broadcasting of court proceedings. 10 FED. COM. B. J. 20 n. 3 (1949).

In Pennsylvania, Rule 223(b) of the Rules of Civil Procedure of the Supreme Court provides:

During the trial of actions the court shall prohibit the taking of photographs and motion pictures in the courtroom and the transmission of communications by telegraph, telephone or radio in or from the courtroom.

See also in New York the Special Rules of the Appellate Division Rules—First and Second Departments; Special Rules of the Appellate Term Rules—First Department, and the various Supreme Court Rules.

⁵⁴ GA. LAWS, Act No. 136 (1949); WIS. STAT. § 348.61 (1949).

Any person who shall either directly from the courtroom or by means of any recorded transcription made in the courtroom, broadcast by radio or any like means of disseminating information all or any part of the proceedings in any criminal trial or examination in this state purporting to be the actual voices of witnesses, counsel or judge, shall be guilty of a misdemeanor. No court or judge shall permit the making of any such recorded transcription for the purpose of broadcasting the same.⁵⁵

In New York, a bill introduced by Senator Helman and enacted during the current legislative session makes a broadcast or *telecast* of any trial or proceeding in any court organized under the laws of New York, whether of record or not of record, a misdemeanor.⁵⁶

Perhaps these enactments and introductory measures presage similar action in other jurisdictions. Nothing could be more commendable or more consistent with our comprehension of the idea of fair play. The televising and broadcasting of trials makes less possible a dispassionate determination and presentation of the issues before the court. It is a practice, incompatible with the dignity of the courts, which casts disrespect on the processes of judicial administration and unnecessarily intensifies the emotional apprehension and humiliation of the witnesses and parties. The best interests of the courts, the accused and the public generally, demand the enactment of appropriate legislation or court rule throughout the various states. By such action only can the integrity of courts in conducting trials and the rights of accused persons during trials best be preserved. Whatever majesty and decency remains to the administration of the law should be conserved and not destroyed by resorting to television, the latest counterpart of the Roman circus—without lions.⁵⁷

⁵⁵ WIS. STAT. § 348.61 (1949). The Georgia Act provides:

The Recorder of the Police Court of the City of Savannah shall not permit radio broadcasts of the proceedings of said court to be made at any time when said court is in session; nor shall he permit any records, wire or tape recordings made of the proceedings and/or hearings of said court for the purpose of making public radio broadcasts of said proceedings. (Georgia Laws, 1949, Act. No. 136, p. 545.)

A person violating this act is deemed guilty of a misdemeanor.

⁵⁶ This bill amends the Civil Rights Law by adding a new section fifty-two which reads as follows:

§ 52. Televising, broadcasting or taking motion pictures of certain proceedings prohibited. No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within this state of proceedings, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in this state.

Any violation of this section shall be a misdemeanor. NEW YORK LAWS of 1952, c. 241.

⁵⁷ The Detroit News, April 1, 1951, p. 15, col. 1.