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Bar Warns High Court TV Can Peril Justice

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The American Bar Association has told the Supreme Court that the televising of a criminal trial over the objection of a defendant deprives him of his constitutional rights.

The ABA took this position in a brief filed in the pending Billie Sol Estes case.

"The fact of petitioner's notoriety cannot justify the prejudicial introduction of a vast electronic audience into the courtroom while other defendants are spared this intrusion," the brief said. "The fact that he was a notorious person . . . makes him no less entitled to absolute fairness at his trial."

Estes was convicted on a swindling charge in a Texas court.

Among the 50 states only Texas and Colorado do not honor the Association's principle of judicial ethics, Canon 35, which opposes photographing and broadcasting of court proceedings.

Only One Issue

In agreeing last December to review the conviction the Supreme Court ruled out all issues but one: Whether the protested televising of the trial violated Estes' guarantee of a fair trial.

The Association brief says that this constitutional protection encompasses the right to an impartial jury and judge, the right of confrontation of witnesses and the right to counsel.

All of these rights are impaired by televising, the brief says. "Each one of the trial participants, be he juror or judge, witness or lawyer, is so likely to be adversely affected by the camera's stare that he would be unable to function in a manner consistent with

the requirements of fair trial . . ."

Estes is now serving a prison term on a Federal conviction of conspiracy and mail fraud. This case is not involved in the Supreme Court proceeding.

Filing of the brief was overwhelmingly by the ABA's House of Delegates on Feb. 8 in New Orleans.

Highlights of Brief

The brief makes the following observations about the effects of telecasting trials:

- Exposure of jurors to nightly taped telecasts of the day's proceedings will be difficult to guard against, and . . . episodes admittedly chosen for their news value and not for evidentiary purposes can serve only to distort the jurors' perspective . . ."

- Judges are required to be impartial, but this "is incompatible with the distractions of television. There are severe pressures involved in the very decision to allow television."

- The accused is guaranteed the right to be confronted with the witnesses against him, but this right "is stripped of all meaning when a trial is televised. Already reluctant, the potential witness . . . will be that much more unavailable." To subpoena a reluctant witness "to undergo the publicity he dreads will only heighten the already distracting presence of the television lens."

- Lawyers cannot represent conflicting interests, but in the presence of TV cameras they may "become concerned, if only subconsciously, with their appearance in the world rather than thinking only of doing whatever is necessary . . . to protect the rights of their client . . ."