

THE LAW

THE SUPREME COURT

Television & Fair Trial

For the first time, the Supreme Court last week tackled the issue of whether television in a courtroom denies a defendant's right to a fair trial. The court ruled 5 to 4 that it does and, in the majority opinion, produced a strong argument for keeping TV cameras out of at least all "notorious" criminal trials.

Incalculable Impact. The case at issue involved none other than the 1962 swindling conviction of Billie Sol Estes, whose trial in a Texas state court was televised over his objections. Justice Tom Clark, reversing Estes' conviction,* declared that TV smuggles an "irrelevant factor" into the courtroom that may poison the atmosphere of the trial and therefore denies the defendant's right to due process of law under the 14th Amendment. Among points he cited:

▶ Potential jurors are influenced "from the moment the trial judge announces that a case will be televised." Filming or taping may distract trial jurors; viewing the edited results may prejudice them. Seeing the original trial on film may sway potential jurors in a new trial, if there is one.

▶ "The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to over-

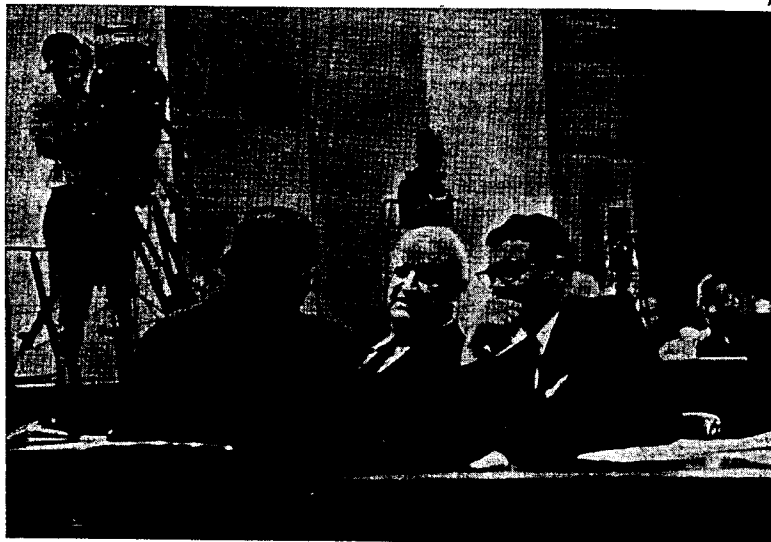
* The reversal voids Estes' eight-year sentence for inducing Texas farmers to buy non-existent ammonia-fertilizer tanks, but he will be retried (without TV). Meanwhile, he is serving a separate 15-year stretch in Leavenworth on a federal conviction for mail fraud and conspiracy.

statement; memories may falter, as with anyone speaking publicly, and accuracy of statement may be severely undermined."

▶ Judges are forced to become temporary TV directors, to say nothing of those who are tempted to ham it up. "Judges are human beings also and are subject to the same psychological reactions as laymen. Telecasting is particularly bad where the judge is elected, as is the case in all save a half-dozen of our states."

▶ TV's impact on the defendant is "a form of mental—if not physical—harassment, resembling a police line-up or the third degree. The inevitable close-ups of his gestures and expressions during the ordeal of his trial might well transgress his personal sensibilities, his dignity, and his ability to concentrate on the proceedings before him—sometimes the difference between life and death—dispassionately, freely and without the distraction of wide public surveillance. A defendant on trial for a specific crime is entitled to his day in court, not in a stadium or a city- or nationwide arena."

Unplowed Field. "Trial by television is foreign to our system," concluded Clark. The four dissenters were not so sure. Justice Potter Stewart pointed out that the court did not examine the issue of whether TV actually prejudiced Estes' jurors, and he warned against any blanket rule that might stifle free press if and when TV becomes less obtrusive. Justice John M. Harlan cast the fifth vote to make a majority, but he urged the court to "proceed step by step in this unplowed field." If the next TV appeal involves different facts, Harlan implied, he may well shift his vote and convert the minority into the majority.



ESTES & LAWYERS AT TELEVISED TRIAL (1962)
Barring a poisoned atmosphere.