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Lawyers Argue TV Effects On Estes Trial in High Court

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On an October Sunday in 1962 Texas State Judge Otis T. Dunagan, who was to preside at a swindling trial of Billie Sol Estes, watched a church service on his home television set.

Later, he decided to overrule a protest by Estes and allow the trial to be televised. "If television is a proper instrument in the House of the Lord it is not out of place in this courtroom," his opinion said.

The view of the elected judge of the role of television was recalled before the Supreme Court yesterday by Waggoner Carr, Attorney General of Texas. But the Court also was told that the television cameras denied Estes a fair trial.

At stake for Estes is the 8-year sentence that threatens to come atop the 15-year term he has begun to serve in a Federal penitentiary in a separate case.

A broader issue—one that the Court's decision may or may not reach—is what place if any television, broadcasting and photography have in a state criminal courtroom when a defendant objects to their presence.

Facts Not Clarified

Much of the two hours the Justices devoted to hearing arguments was consumed by efforts to find out just what the facts were.

At times, one of Estes' lawyers, John D. Cofer of Austin, seemed to be less familiar with the trial record than the Justices. But the basic facts brought out appeared to be these:

All but Texas and Colorado among the 50 states prohibit television and photography in the courtroom. A similar prohibition exists in the Federal courts.

In September 1962, Judge Dunagan held a two-day hearing on a defense motion to forbid television coverage of the trail. This hearing was covered — live, at times — by cameras and microphones spotted about the courtroom. Against his will Estes appeared on TV news programs.

Overruling the defense motion, the Judge allowed TV to be present at the October trail — but under rules he imposed. TV camera lenses were grouped in an opening in a specially constructed booth at the rear of the courtroom.

Witnesses could be photographed, but their testimony could not be recorded for subsequent use. However, live pictures and sound were permitted of the final prosecution argument and of the announcement of the verdict. The defense refused to have its argument telecast or broadcast.

As in all felony trials in Texas, the jury was sequestered. It was "absolutely immune" from outside influences, Carr told Chief Justice Earl Warren.

Position of Defense

The position of Cofer, arguing for Estes, came down to this: The right of a defendant to a fair trial is not jeopardized by the public's right to know when the public is represented in the courtroom by reporters, but it is jeopardized when the accused is forced to submit to televising, television is extraneous to the judicial function.

As Justice Arthur J. Goldberg put it, Cofer's position "is that the defendant was made to put on a show, an entertainment, a performance."

Warren suggested that the Estes case had reached the Supreme Court not because of irregularities inherent in the American trial system, but because of a situation "contrived and set up by the [trial] court itself"—TV coverage that was "superimposed" not to protect the defendant, "but for commercial reasons."

The gist of the State's position, stated by Carr and Special Assistant Attorney General Leon Jaworski, was this:

In no way did the pre-trial proceeding deprive Estes of a fair trial. Nothing was said relating to his guilt or innocence. The jury that was to try him had not been empaneled.

Nor did the unobtrusive TV arrangements at the trial itself harm any right of the defendant. The jury was sequestered. No testimony was broadcast to the public. By themselves, broadcasting and telecasting do not impair fair trial.