

Impeachment on TV: Two Views

Jerome Barron

'Publicity Would Become All Pervasive'

Impeachment trials, fortunately, are such rare events in this country that there is little direct, authoritative guidance on whether impeachment of a President should be televised: We have no experience on the question of mixing impeachment with television.

When the Billie Sol Estes case came before the Supreme Court in 1965, Justice Tom C. Clark, speaking for the court, said that the "chief function" of judicial machinery was to "ascertain the truth." Rather tartly, the court said: "The use of television, however, cannot be said to contribute materially to this objective."

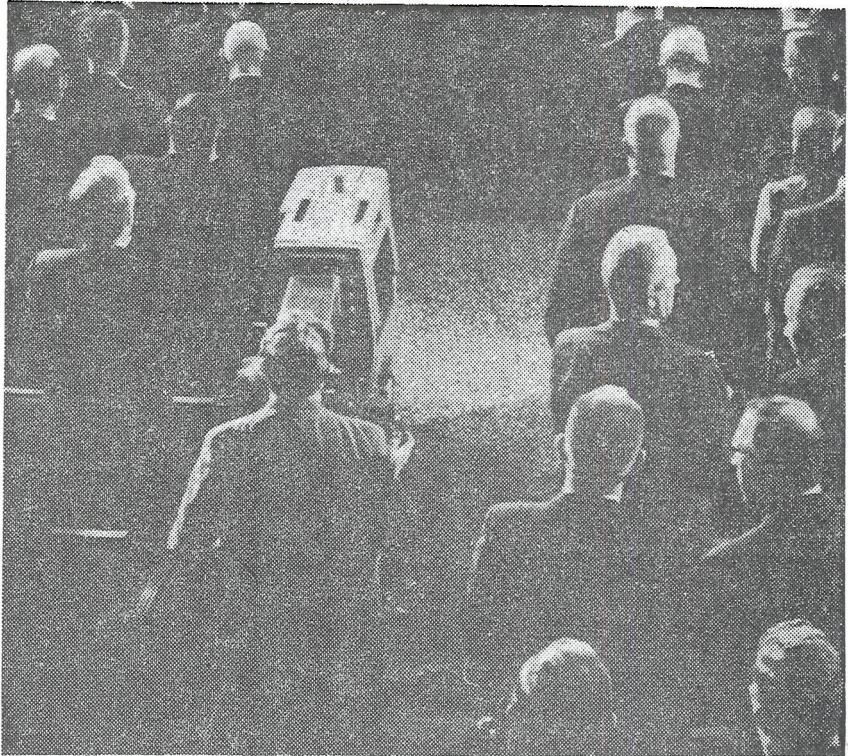
In an impeachment proceeding, the senators are the jurors.

"If the community be hostile to an accused, a televised juror, realizing that he must return to neighbors who saw the trial themselves, may well be led 'not to hold the balance nice, clear and true between the state and the accused,'" the Supreme Court said. Furthermore, is there any real answer to the court's anxiety that television inevitably fixes the jury's eyes on the camera rather than on the testimony?

In an era when the law has extended due process concepts to more and more areas of American life, surely it is hard to argue that due process and its implications for criminal trials should not also apply to the question of televising an impeachment.

It may be said that hearings of the Senate Watergate Committee were televised, and that if the proceedings of the committee that led to an impeachment could be televised, why shouldn't the impeachment trial itself also be televised?

The two are not comparable. Only at the outermost perimeters of its legislative responsibilities did the Watergate Committee touch on questions of guilt or innocence as they might affect criminal defendants, the *raison d'être* of the impeachment trial, however, is the guilt or innocence of the accused.



Excluding the television cameras would not deprive the public of its right to know. Coverage by the print press of any impeachment will be continuous, extensive and freewheeling. News and commentary on radio and television would be similarly free and extensive. That is our tradition, and the precedent of the Andrew Johnson trial. But televising an impeachment would allow publicity to become all pervasive.

In an impeachment, the Senate is, in effect, a courtroom, and we therefore should remember the counsel of Chief Justice Earl Warren in his separate opinion in the Estes case: "We must take notice of the inherent unfairness of television in the courtroom and rule that its presence is inconsistent with the 'fundamental conception' of what a trial should be."

I think the conclusion is clear: Televising the national torment of a President's impeachment would be unwise.

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