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Television in the Court Room: Estes v. Texas (U.S. 1965) Case Notes

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TELEVISION IN THE COURT ROOM: *ESTES V. TEXAS* (U.S. 1965)

One of the basic rights guaranteed by our Constitution is that one accused of a crime shall be afforded a fair trial by an impartial jury. Publication concerning criminal trials may raise serious threats to this basic right. Exercising their constitutional right to free speech and press, newspapers, radio, and television broadcasters publicize court proceedings and the statements of all the parties. Their efforts, which often jeopardize an accused's right to an impartial trial, have been condemned as the "legitimate great-grandchild of ordeal by fire, water and battle."[1] This note will examine the impact of *Estes v. Texas*[2] on the general area of prejudicial publicity and its effect on a criminal defendant's right to a fair trial. Consideration will also be given to state law in reference to the potential impact of this decision.

Estes v. Texas

The strength of the opposition to trial by mass media is reflected by the Canons of Judicial Ethics of the American Bar Association, which would neither permit photography in the courtroom nor the broadcasting or televising of court proceedings.[3]

In *Estes* the petitioner recited his claim in the framework of Canon 35, not contending that it should be enshrined in the fourteenth amendment, "but only that the time honored principles of fair play were not followed in his case and that he was thus convicted without due process of law."[4]

Petitioner had been indicted by a Texas grand jury for swindling. Massive pretrial publicity had given the case national notoriety. The two days of pretrial hearings were carried live over radio and television. Live telecasting was prohibited during most of the trial, but the state's opening and closing arguments were carried live with sound as were the return of the jury's verdict and its receipt by the judge. The court's order allowed video tapes without

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1 Boldt, *Should Cannon 35 Be Amended?* 41 A.B.A.J. 55 (1955).

2 381 U.S. 532 (1965).

3 Canons of Judicial Ethics. American Bar Association: Judicial Canon 35. Improper publicizing of Court Proceedings. "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 or televising of court proceedings detract from the essential dignity of the proceedings, distract participants and witnesses in giving testimony, and create misconceptions with respect thereto in the mind of the public and should not be permitted."

4 381 U.S. 532, 535 (1965).

sound of the whole proceeding and the cameras operated intermittently during the three day trial. These films were shown nightly on regularly scheduled news programs.

In reviewing this case, the Supreme Court expressed concern with the unconscious impact of television on the jury, the witnesses, the judge and the accused, particularly when the case was established as a cause *celebre* impressing upon the community the "notorious character of the petitioner as well as the proceedings."[5]

The Court held that the televising and broadcasting of portions of petitioner's criminal trial was prejudicial per se because the inherent nature of such action infringed the fundamental right to a fair trial guaranteed by the due process clause of the fourteenth amendment. The Court held that the procedure employed by the state involved such a probability that prejudice would result, that it was lacking in due process, whether or not isolatable prejudice was demonstrated.

Estes is one of a series of cases concerned with the impact of publicity on a criminal defendant's right to due process of law. However, the case was one of first impression on the issue of television in the courtroom and for that reason is based on decisions from analogous areas.

The Early View

The early cases concerned with the prejudicial effect of mass publicity adopted the criterion that, in the absence of strong evidence to the contrary, bias alleged to have resulted from publicity was not grounds for reversal provided that jurors with preconceived opinions concerning the guilt or innocence of an accused could state to the court's satisfaction that they would lay aside their opinion, and render a fair and impartial verdict based solely on the evidence presented at the trial.[6]

As a result, the presence of extensive and prejudicial publicity in and of itself was insufficient to establish that an accused had been denied a fair trial.[7] Nor could a conviction be reversed merely because some of the jurors had read such publications prior to a trial.[8] If the prejudicial material was read by jurors while the trial was progressing, the instructions of the trial judge to disregard any

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[5] *Id.* at 545.
[6] Reynolds v. United States, 98 U.S. 145, 155-56 (1878).
[7] Stroble v. California, 343 U.S. 181 (1952).
[8] Van Riper v. United States, 13 F.2d 961 (2d Cir. 1926), *cert. denied*, 273 U.S. 702 (1926).

opinion formed by the article was considered sufficient to insure the right of an accused to an impartial trial.[9]

These rules were solidified by the United States Supreme Court in the 1951 case of *Stroble v. California*.[10] In rejecting Stroble's claim that he had been denied a fair trial because of prejudicial publicity stemming from press coverage and releases to the press by the district attorney, the Court observed:

> Indeed, at no stage of the proceedings has petitioner offered so much as an affidavit to prove that any juror was in fact prejudiced by the newspaper stories . . . . There is no affirmative showing that any community prejudice ever existed or in any way affected the deliberations of the jury.[11]

The majority of cases had thus adopted the position that the decision of the trial judge was almost conclusive on the issue of impartiality, when jurors asserted on *voir dire* that they could render an impartial verdict.

Creation of a New Standard

Irvin v. Dowd[12] was the first case to place a qualification on the old standard. Irvin was tried and convicted of murder and was sentenced to death. The facts indicate that there had been six murders committed in the vicinity, all of which were extensively covered by the local news media. The news coverage aroused a great deal of excitement and indignation among inhabitants of the general area. Shortly after Irvin was arrested, the prosecutor and the local police issued press releases stating that Irvin had confessed to the six murders. These releases were intensively publicized in newspapers reaching approximately 95% of the dwellings in the venue. In addition, both television and radio coverage blanketed the area.

The Supreme Court reversed the state court conviction on the basis that the jury had been prejudiced prior to trial by inflammatory publicity.[13] The Court held that a state conviction violates due process where the record reflects "a pattern of deep and bitter prejudice" engendered against the accused in the trial venue by unfavorable pretrial publicity. The Court noted, however, that the constitutional guarantee of a fair trial does not require that jurors be totally ignorant of the facts and issues involved. It is sufficient

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9 United States v. Pisano, 193 F.2d 355, 360-61 (7th Cir. 1951).
10 343 U.S. 181 (1952).
11 *Id.* at 195; *accord*, United States v. Handy, 351 U.S. 454 (1956).
12 366 U.S. 717 (1961).
13 *Id.* at 725.

if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in the court.[14]

The qualification set out in *Irvin* is that the *federal judiciary* must be satisfied that the jurors were capable of, and did lay aside their preconceived judgment. This is an area of examining the facts in light of constitutional principles. In this area, the federal judiciary is not bound by determinations made by the trial court judge.

Having thus qualified the old standard, only two years later the Supreme Court was called upon to decide the case of *Rideau v. Louisiana*.[15] In *Rideau*, defendant was arrested shortly after a bank robbery-murder. The morning after the arrest a motion picture film with a sound track was made of an interview in the jail between the defendant and the local sheriff. The interview consisted of interrogation by the sheriff and confession by the defendant to the crimes charged. The interview was televised over a local station for three days. Subsequently, defendant was indicted on charges of armed robbery, kidnapping, and murder. A request for change of venue made by defendant's lawyers was denied. Defendant was convicted of these charges and was sentenced to death. Three members of the jury which convicted him had stated on *voir dire* that they had seen and heard the televised confession of defendant. Challenges for cause of these jurors was denied by the trial judge.

The Supreme Court reversed the conviction without any extensive review of the *voir dire*. The court concluded that the publicity was so prejudicial that it amounted to the trial itself and subsequent court proceedings were but a "hollow formality."[16]

The *Rideau* decision neither qualifies nor changes the standard set out in the *Irvin* case. Instead it creates a new rule in the area of prejudicial publicity by indicating that the nature of the publicity itself may make it prejudicial per se regardless of whether or not the particular jurors deciding the case were impartial.

In light of the foregoing cases, *Estes* must be considered as an expansion of the prejudice per se rule. In *Irvin* and *Rideau* the publicity occurred outside the courtroom and could not be effectively curtailed.[17] The Court in these cases found a venue literally

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[14] *Id.* at 723.

[15] 373 U.S. 723 (1963).

[16] *Id.* at 733, "But we do not hesitate to hold, without pausing to examine a particularized transcript of the *voir dire* examination of the members of the jury that due process of law in this case required a trial before a jury drawn from a community of people who had not seen and heard Rideau's televised interview."

[17] See Bridges v. California and Times v. Superior Court of California, 314 U.S. 252 (1941); Craig v. Harney, 331 U.S. 367 (1947).

saturated by venomous pre-trial publicity. However, the *Estes* decision did not concern itself to any great extent either with the public attitude toward the case, or with the content of the publicity involved. The *Estes* Court found numerous situations in which televising court proceedings might cause unfairness[18] and held that allowing this procedure, involving such a probability that prejudice would result, made the procedure inherently lacking in due process.[19]

ESTES AND STATE LAW

Prior to the decision in *Estes*, the states were divided on the issue of televised criminal proceedings.[20] Only two states affirmatively permitted television, but many states had not taken an express stand on the issue, or their positions were very unclear.

People v. Stroble[21] is an example of this latter group. In this case the newspapers had printed the confession of defendant and statements of the district attorney saying that the accused was guilty. Further, portions of the trial were carried over television, and news photography was allowed in the courtroom. The California Supreme Court rejected defendant's claim that he had been denied a fair trial by pointing out that he had failed to prove that any juror was in fact prejudiced.[22] The decision obviously turns on defendant's failure to show actual prejudice, but the court *appears* to take the position that had the appeal been based solely on the prejudicial effect of television in the courtroom, the same line of reasoning would have been followed, requiring a showing of prejudice in fact before a reversal would have been granted.[23]

The decision in *Estes* seems to resolve the various inconsisten-

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[18] 381 U.S. 532, 544-50 (1965). Summarized these are: (1) Improperly influencing jurors by emphasizing the notoriety of the trial and affecting their impartial judgment, distracting their attention, facilitating their view of selected parts of the proceedings, and improperly influencing potential jurors and thus jeopardizing the fairness of new trials; (2) Impairing the testimony of witnesses by causing some to be frightened and others to over-state their testimony; (3) Distracting judges generally and exercising an adverse psychological effect, particularly upon those who are elected; and (4) imposing pressures upon the defendant and intruding into the confidential attorney-client relationship.

[19] *Id.* at 544.

[20] The positions of the various states are set out in Estes v. Texas, 381 U.S. 532, 580-82 nn.38 & 39.

[21] 36 Cal. 2d 615, 226 P.2d 330 (1951).

[22] *Id.* at 722-23, 226 P.2d at 334, ". . . there is no indication that the jury . . . based their verdict on the newspaper accounts of the statements rather than upon the evidence. We can also assume *that it was improper to allow* the taking of news photographs or *televising in the courtroom;* but there is no indication that the jury's verdict was influenced by the taking of pictures or the televising of courtroom scenes." [Emphasis added.]

[23] *Ibid.*

cies in state law. The Court points out that the publicity in *Irvin* and *Rideau* occurred outside the courtroom and could not be effectively curtailed. Nevertheless, the *circumstances* were held to be inherently suspect and therefore a showing of prejudice was not a requisite to reversal. The Court continues: "Likewise in this case the application of this principle is especially appropriate."[24] Any procedure which would permit the use of television "would be inconsistent with our concepts of due process."[25]

Faced with the language, intent and holding in *Estes* it appears certain that a state no longer has any discretion on the issue of television in the courtroom. In order to satisfy the requirements of due process of law a state must prohibit the "inherent prejudice" of television.

Conclusion

In recent years there has been an increasing sensitivity, at least in the Supreme Court, for the need to guarantee a criminal defendant's right to due process of law. In the area of prejudicial publicity this concern centers around a realization of the subconscious effect on jurors of extra-judicial influences, with the resultant inability of the defendant to prove with any particularity wherein he was prejudiced.

The *Estes* decision followed this trend in finding courtroom television to have an insidious influence which inherently prevents a sober search for the truth.

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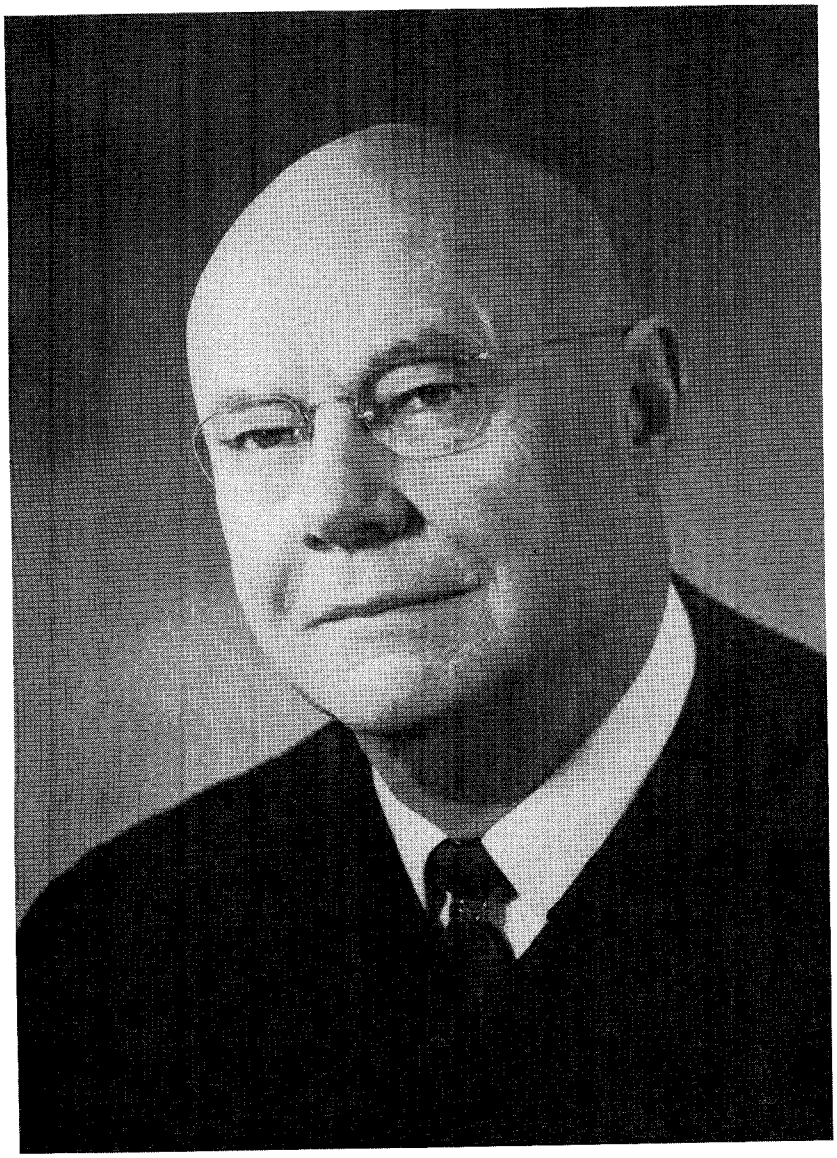
[24] 381 U.S. 532, 544 (1965).
[25] *Ibid.*



The Honorable Marshall F. McComb