EXHIBIT B

ASSEMBLY INTERIM COMMITTEE REPORTS
1965–1966

VOLUME 23 NUMBER 8

FINAL REPORT OF THE SUBCOMMITTEE ON FREE PRESS—FAIR TRIAL

A Subcommittee of the
ASSEMBLY INTERIM COMMITTEE ON JUDICIARY
GEORGE A. WILLSON, *Chairman*

MEMBERS OF THE SUBCOMMITTEE
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WILLIAM T. BAGLEY
RICHARD J. DONOVAN
JOHN F. FORAN
HARVEY JOHNSON
JAMES E. WHETMORE
JOE FOX, *Special Consultant and Study Director*
ERMA OAKLEY, *Committee Secretary*

Published by the
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OF THE STATE OF CALIFORNIA

HON. JESSE M. UNRUH
Speaker
HON. CARLOS BEE
Speaker pro Tempore
HON. GEORGE N. ZENOVICH
Majority Floor Leader
HON. ROBERT T. MONAGAN
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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON JUDICIARY

January 5, 1967

HONORABLE JESSE M. UNRUH
Speaker of the Assembly,
and Members of the Assembly
State Capitol
Sacramento, California

Gentlemen:

In accordance with the provisions of House Resolution No. 710 of the 1965 Regular Session, the Assembly Interim Committee on Judiciary herewith submits a final report of its Subcommittee on Free Press—Fair Trial.

Respectfully submitted,

GEORGE A. WILLSON, *Chairman*

Members Subcommittee
Free Press—Fair Trial
WILLIAM T. BAGLEY
RICHARD J. DONOVAN
JOHN F. FORAN
HARVEY JOHNSON
JAMES E. WHETMORE

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HOUSE RESOLUTION NO. 710

(ASSEMBLY JOURNAL, JUNE 14, 1965, PAGE 5671)

Relative to constituting certain standing committees of the Assembly as interim committees

Resolved by the Assembly of the State of California as follows:

1. The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative:

(1) The Committee on Judiciary is assigned the subject matter in the Civil Code, the Code of Civil Procedure and the Probate Code, uncodified laws relating to civil matters, and other matters relating to the civil law and procedure of the state.

PURPOSE AND OBJECTIVES

The purpose and objectives of the interim hearings on the presumed and possible conflict involving the constitutional guarantees of *free press* and *fair trial* are fully delineated in House Resolution No. 373 and House Resolution No. 523, both authored by Assemblyman George A. Willson, Chairman of the Committee on Judiciary.

Assemblyman Willson, a member of the State Judicial Council, was designated by the Speaker of the Assembly to serve as chairman of the select Free Press—Fair Trial Judiciary Subcommittee.

On Friday, November 26, 1965, the California Judicial Council voted to bar all photographers and broadcasters from courtrooms while courts are in session or in recess. This restriction, classified as Rule 980, was approved by a 17-to-1 majority; Assemblyman Willson cast the dissenting vote.

The reason for his negative vote, Assemblyman Willson declared, was his "lack of conviction that Rule 980 and the restrictions it imposes is truly needed at this time. It has not been demonstrated to me that sufficient news media abuses have occurred to justify this abridgment of press 'freedom.'

"Also," Willson added, "the regulation of news media activity in courtrooms has invariably and historically been the sole responsibility of the presiding judge in each courtroom.

"The advocates of Rule 980," Willson concluded, "should have full opportunity to establish by clear and convincing evidence that representatives of news media in California have interfered with the constitutional guarantees of *fair trial*."

CONCLUSIONS

The witnesses who testified before this committee were virtually unanimous in their concern for preservation of dignity and decorum in the courtroom and in their insistence on the right of any litigant to a fair trial. They were equally outspoken, however, in their condemnation of Rule 980—and all other attempts to limit by statute the news media's access to information of interest to the general public.

Based on the testimony of these 38 witnesses and several experiments and keeping in mind the need for further studies of this issue (see "Recommendations"), the committee has reached the following conclusions:

1. Many prejudices against the presence of photographic and recording equipment in the courtroom stem from stereotyped concepts of this equipment—concepts retained from the days when exploding flashbulbs, mazes of wire and loudly whirring cameras were rightfully thought to disrupt any organized proceeding.
2. Modern equipment may be operated unobtrusively by trained personnel—so unobtrusively that participants in litigation are oblivious to their presence and are in no way affected by this. When the equipment is operated from soundproof booths adjacent to the proceedings, noise is not just unobtrusive—it is nonexistent.
3. Many judges feel their discretionary powers—which still include the right to make rulings affecting the lives of litigants—have been unduly abridged by Rule 980.
4. Some attorneys, jurors and witnesses may, indeed, indulge in theatrics for the benefit of television or may be rendered less effective or more nervous by the presence of cameras. The vast majority of persons involved in litigation will either be unaffected by the cameras or, if anything, will act more properly, speak more clearly and operate more effectively if they know their actions are being recorded.
5. Televising courtroom proceedings would have the dual beneficial effects of more directly involving the average American citizen with the legal system of his country and of educating him on jurisprudence.
6. Restriction of the photographer or broadcaster in the courtroom could give court proceedings a cloak of secrecy that, however fair and just they were, would leave most citizens feeling something evil was being concealed.
7. Television coverage of the courts could eventually act as a deterrent to crime by showing all Americans—including the potential criminal—the inexorable, inevitable toll justice extracts from lawbreakers.
8. To prohibit cameras and recording equipment from the courtroom is to discriminate unfairly against the audiovisual medium. If the newspaperman is to be allowed in the court with the tools of his trade—pencil and paper—the television and radio newsman must be allowed inside with the tools of his trade—cameras and tape recorders. To do otherwise is to deprive the audiovisual medium of its right to compete with the printed medium.

9. The single most important finding of this committee—and the single point stressed most often by witnesses from every field involved—is:

> The conflict between fair trial and free press, particularly as this conflict relates to Rule 980, is not a conflict at all. Far from mutually excluding each other, they cannot exist without each other. A fair trial must, of necessity and according to the Sixth Amendment to the United States Constitution, be a public trial. In mid-20th-century America, where sprawling urbanism has replaced concentrated ruralism and where no courtroom in the land could hold even a minute fraction of the people interested in specific cases, a trial is not truly public unless news media are free to bring it to the home of the citizens by newspaper, magazine, radio, television or whatever device they have.

These nine conclusions were arrived at after careful consideration of all testimony offered by the 38 witnesses who voluntarily appeared at the hearings. It must be admitted, however, that the committee was more impressed with practical applications of courtroom coverage than with theoretical defenses of that coverage—no matter how eloquent and logical those defenses were.

The practical applications to which the committee was exposed—either firsthand or by reliable account—were five. The most significant by far was the demonstration of unobtrusive radio, newspaper and television coverage of committee hearings themselves in San Diego. Most people present in the hearing room—and there were several dozen there at the time—did not know the proceedings were being filmed and recorded until the sixth witness of the day stepped forward. Said George Whitney, vice president, Columbia Broadcasting System, and general manager, KFMB radio and television stations:

> "The great complaint has been that reporters with their cameras and lights are obtrusive and interfere with the normal conduct of a trial or hearing. This need not be the case. In these chambers, you have not seen a single light glaring in your faces, or the faces of the witnesses. No cumbersome cables or wires. No bulk of equipment. No reporters running around. In a word, we of the press have been unobtrusive. And yet, gentlemen, we have been here, covering every second of these proceedings. I'd like to prove it to you."

At that point, Mr. Whitney directed a video tape playback of excerpts from testimony that morning. The film was made, he said, by two cameras in booths at the back of the room. Still pictures were also taken without flashbulbs. His statement that "this demonstration has proven what news media and broadcasters have contended—that court proceedings can be televised without jeopardizing justice or decorum" certainly rang true with the committee.

The four other experiments in courtroom coverage to which the committee was exposed are described in the excerpted testimony given elsewhere in this report. They included:

— A report by Supreme Court Justice Otto Moore of Colorado on his state's plan for courtroom coverage.
— An explanation of television and broadcast coverage of United Nations session.
— A report by Municipal Court Judge Roberta Butzbach on the videotape recording of a two-day trial in her court made at the request of Assemblyman Willson, committee chairman.
— A defense of television coverage in Los Angeles Traffic Court by Judge Noel Cannon.

These practical applications of television, newspaper and radio courtroom coverage, combined with the expert testimony of more than three dozen witnesses, formed the foundation on which the committee built its nine conclusions and the recommendations presented on the next page.

RECOMMENDATIONS

1—That the Assembly, during the 1967 Regular Session, urge the Judicial Council to extend Rule 981 for a 12-month period.

2—That the Assembly, in the event that the Judicial Council does not extend Rule 981, enact legislation designed to amend Rule 980 in a manner that will resore to each presiding judge the authority he formerly possessed to regulate the conduct of news media along with other matters pertaining to the conduct of a trial over which he presides.

3—That the Assembly, with the concurrence of the Senate, initiate a proposal for a joint legislative study of the most appropriate manner to test the "Colorado Plan" in a single California judicial district deemed receptive and conducive by an advisory committee representing members of the *bar, bench, news media* and the *public*.

4—That the Assembly appropriate the funds required to maintain continuing studies of the presumed areas of conflict that may exist between *free press* and *fair trial* constitutional guarantees.

5—That the Assembly advocate the establishment of a permanent Constitutional Rights Committee in California that will contain representatives of news media, the Bar of California, members of the State Judiciary, civilian public officials, law enforcement, prosecution and the citizenry at large.

6—That representatives of the broadcast industry and the news media relating to photography, the principal objects of Rule 980, be encouraged to continue their efforts to develop the most effective tools and techniques for unobtrusive coverage of news events other than courtroom matters in order to achieve more universal acceptance of their unique and distinctive contributions to the areas of public enlightment in a free society.

AN AIRLINE BOMBING IS NATIONAL "NEWS" AND THE "COLORADO PLAN" EVOLVES

Question: "Justice Moore, as the referee in the hearing of the Supreme Court of Colorado and Canon 35, would you tell us your reactions to the demonstrations of courtroom photography and radio recording as presented to the court."

Answer: "Frankly, I was very much surprised that courtroom photography, radio and television cameras could operate in the courtroom and create so little, practically no distraction whatever."

Question: "Now, just as the John Gilbert Graham trial provided the Denver area radio and television stations with their first opportunity to cover a trial following the modification of Canon 35, what was your reaction to that coverage?"

Answer: "I thought the reaction to the coverage of that trial by radio, television, newsreel and photography was very exceptional. It seemed to me to be proved conclusive that the findings which I reached as a result of our hearings up here . . . at the conclusion of our hearings up here . . . were amply justified."

Question: "Now, the John Gilbert Graham trial was appealed to the high court. Was the fact that the case was televised and broadcast cited as a cause for error at the trial?"

Answer: "No. No assignment of error was based upon the claim that the right of the defendant was prejudiced in any way by photography, radio or television coverage."

Question: "Was such coverage mentioned at all in the appeal?"

Answer: "No."

Question: "May we ask you . . . do you see any educational value through the televising and broadcasting of trials?"

Answer: "Yes, I have always been of the belief that the procedures in courtrooms were, as generally understood by the public, not accurate at all, and I think that some very definite benefit is to be derived from an accurate, truthful presentation of what goes on in the courtrooms of America."

Question: "Finally, Justice Moore, do you think that radio and television coverage of trials might conceivably serve as a deterrent to crime?"

Answer: "Well, I asked all the district judges of our state their conclusions in that behalf and received a number of answers from them. Many of them thought that it would have a definite effect upon deterring crime. Personally, I think that if one was about to commit some sort of offense if he were to hesitate and understand and realize that crime doesn't really pay and that the culprit is more often brought to justice it would tend to have, over the years, a very definite influence in this realm of deterring crime."

"THE COLORADO PLAN"—IT WORKS IN ONE-FIFTIETH OF THE UNITED STATES

Since that time 10 years ago, the Colorado courts have permitted radio and television coverage and newspaper photography of court

cases. Last week we asked the KLZ-TV news department to contact Supreme Court Justice Moore again, and to ask him to assess the experience of a decade in Colorado. This film statement was made by Justice Moore just last week in Denver.

"The rule of the Supreme Court of Colorado which permits closely supervised operation of cameras in the courtroom has been in effect for about 10 years. The best photographers and operators of television cameras and radio men have never created any problem whatever insofar as the decorum of the courtroom is concerned. The cameras are always concealed. They are silent. Their output is accurate. They create no false impressions. In all the 10 years in which they have been permitted to function no complaint has ever been made to the Supreme Court of this state by any lawyer, defendant, witness or juror that the use of a camera, or a microphone by the press media of this state has in any manner whatever prevented a fair trial, or in any way interfered with any person in performing his duty as lawyer, judge, witness or juror.

"Under our rule, but one concealed television camera is permitted to function. Any station desiring to use the output is entitled to use it under a pooling arrangement voluntarily entered into by the various stations. To my knowledge, no more than two press photographers have ever been permitted to cover court proceedings at the same time. Their work is also subject to a pooling agreement and is made available to papers desiring to use any picture taken by a press photographer in the courtroom.

"In order to guard against possible reversal of cases, following the decision of the Supreme Court of the United States in the Billy Sol Estes case, we amended our rule. We now require that the consent of an accused person must be shown of record before cameras are permitted to function in any criminal case. In a civil action, the litigants must affirmatively show by statement in the record that they have objection to cameras in the courtroom.

"Following this change in our rule, I know of no case in which a defendant has failed to consent to the use of cameras in his trial where a request was made by the news media to take pictures. We are completely satisfied that our rule is a good one. The lawyers who practice in the trial courts will agree that cameras properly regulated are in no way offensive, and do not in the least prevent a fair trial. At least 90 percent of the trial judges in our state have permitted cameras in court under our procedures, and I don't know of one trial judge who has had an unpleasant experience in connection with the use of cameras in the courtroom.

"We believe our rule fully protects all participants in the trial of any case, and in permitting a regulated use of cameras in court we only give the same recognition to the cameramen which has been afforded the press reporter in our courtrooms since courts were first established in this country. Actually, our experience has been that cameramen function with even less disturbance than do press reporters, and their handiwork is always free from distorted interpretations. We intend to keep our rule and are completely satisfied that we are doing the right thing in doing so."

HOUSE RESOLUTION NO. 373

Relating to "Freedom of Information" study

WHEREAS, The Attorney General of the United States has announced a new policy that forbids the disclosure of pre-trial information in federal criminal cases by all Justice Department employees, including prosecutors and the FBI, in an attempt "to strike a balance between the constitutional guarantees of a 'Free Press' and a 'Fair Trial' "; and

WHEREAS, A Los Angeles County Superior Court Judge has ruled that "a prosecutor has the freedom to comment factually to the press on pending criminal cases"; and

WHEREAS, Controversy and uncertainty prevails in the State of California among the members of the judiciary, bar associations, the Legislature and law enforcement agencies over the multiplicity of proposals submitted to resolve presumed conflict between the constitutional guarantees of "Free Press" and "Fair Trial"; and

WHEREAS, In the State of California representatives of all news media that include press associations, radio and television stations and networks and newspapers as well as periodicals are in contention that constitutional guarantees of "Free Press" are in danger of serious and unwarranted abridgement; and

WHEREAS, A section of the Revised Code of Evidence of the State of California, in its pre-amended form, sought to establish that news reporters could no longer retain established immunity from contempt proceedings for declining to disclose sources of information; and

WHEREAS, The Judicial Council of California has deemed it appropriate to recommend that segments of the news gathering and dissemination profession that are required to utilize sound recording and photographic instruments and devices in the performance of their assigned tasks be denied access to courts, corridors and environs except for "ceremonial" and "educational" purposes; and

WHEREAS, The First Amendment of the Constitution of the United States establishes a continuing and undeniable "Free Press"; and

WHEREAS, The Sixth Amendment to the Constitution of the United States provides a "Fair Trial" guarantee in the "Right to a Speedy and Public Trial"; and

WHEREAS, Article I, Section 9 of the Constitution of the State of California contains a "Free Press" guarantee not unlike the provision established by the First Amendment of the Constitution of the United States; and

WHEREAS, Article 1, Section 13 of the Constitution of the State of California provides a "Fair Trial" guarantee comparable to that contained in the Sixth Amendment of the Constitution of the United States; and

WHEREAS, A sub-committee of the Judiciary Committee of the Senate of the United States has disclosed plans to make a study of the possible areas of conflict that appear to exist between the constitutional guarantees of "Free Press" and "Fair Trial", conduct hearings on the issue and consider the need for possible legislation; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to refer for study to an appropriate interim committee the area of possible conflict between the guarantees of "Free Press" and "Fair Trial" that are established in the constitutions of the United States and the State of California; and be it further

Resolved, That the interim study shall also include the feasibility of establishing a "Freedom of Information" BILL of RIGHTS for all segments of the news gathering and dissemination industry that shall permit unrestricted utilization of tools, implements, equipment and devices deemed essential and appropriate for each distinct news media in the performance of its assigned task and that such interim committee shall report its findings and recommendations no later than the fifth calendar day of the 1967 Regular Session.

Resolution read, and referred by the Acting Speaker to the Committee on Rules.

HOUSE RESOLUTION NO. 523

Relative to constitutional guarantees of "Free Press" and "Fair Trial"

WHEREAS, The Rules Committee of the Assembly has approved House Resolution 373 that calls for an interim study by an appropriate interim committee of the Assembly of the area of conflict that might prevail between the guarantees of "Free Press" and "Fair Trial" that are established in the Consitutions of the United States and the State of California; and

WHEREAS, A sub-committee of the Judiciary Committee of the United States Senate has disclosed plans to make a study of the possible areas of conflict that appear to exist between the constitutional guarantees of "Free Press" and "Fair Trial," conduct hearings on the issue, and consider the need for possible legislation; and

WHEREAS, The Judicial Council, the governing body of the courts of California, recently deferred until the November session, the plan to impose regulatory restrictions in this vital area; and

WHEREAS, The District Attorney of Los Angeles County released a series of proposed recommendations on May 20, 1965, that appear to some news media representatives to contain unwarranted restrictions on their ability to secure news and information from the office of the district attorney and law enforcement agencies in areas of criminal matters; and

WHEREAS, It is conceivable that district attorneys and law enforcement officials in other counties of California might be induced to emulate the pattern contained in the recommendations of the District Attorney of Los Angeles County; and

WHEREAS, Constitutional guarantees establishing the provisions of "Free Press" and "Fair Trial" appear to be in danger of unwarranted abridgment in several cities and counties in California; now, therefore, be it

Resolved by the Assembly of the State of California, That until the completion of the interim studies by an appropriate committee of the Assembly and appropriate recommendations from the Judicial Council it is hereby requested of all district attorneys throughout California that no new restrictive regulations be imposed that might conceivably violate constitutional and statutory guarantees of "Free Press" and "Fair Trial"; and be it further

Resolved, That the Chief Clerk of the Assembly be instructed to provide copies of this resolution to all district attorneys in the State of California.

Resolution read, and referred by the Speaker pro Tempore to the Committee on Rules.

THE PLAN FOR CALIFORNIA—IS IT NEEDED?

TITLE THREE. MISCELLANEOUS RULES
DIVISION IV. GENERAL RULES APPLICABLE TO ALL COURTS

Rule 980. *Photographing, recording and broadcasting in courtroom*

(a) (Prohibition during sessions and recesses.) Photographing, recording for broadcasting and broadcasting shall not be permitted within the courtroom while court is in session or during any midmorning or midafternoon recess except as provided in subdivision (b) hereof.

(b) (Exception for ceremonial proceedings.) Photographing, recording for broadcasting and broadcasting of judicial proceedings may be permitted by the court and under its supervision if such proceedings are designed and carried out primarily as ceremonial proceedings.

(c) (Subject to court limitation when not prohibited.) Photographing, recording for broadcasting and broadcasting within the courtroom when not prohibited by this rule shall be subject to such limitations as the court may prescribe.

AN OPPORTUNITY TO TEST THE "COLORADO PLAN" IN CALIFORNIA

AMENDMENT TO CALIFORNIA RULES OF COURT

Adopted by the Judicial Council of the State of California
Effective June 1, 1966, through December 31, 1966

JUDICIAL COUNCIL RESOLUTION
(Adopted May 7, 1966)

WHEREAS, The Assembly's Committee on Fair Trial and Free Press, a subcommittee of the Assembly Interim Committee on the Judiciary, has indicated its desire to photograph a limited number of actual court trials as part of its interim studies, using modern television and news cameras; and

WHEREAS, The committee has advised the Judicial Council that any photographs and recordings made by it will be used solely for its investigation and not for broadcast or news purposes or for any commercial purpose, and that photographing will be done only with the consent of the court involved, the consent of the judge presiding at the trial and the consent of all parties, attorneys, witnesses and jurors participating in the trial; and

WHEREAS, Rule 980 of California Rules of Court, adopted in 1965 by the Judicial Council after several years of study, now limits courtroom photography to recess periods that do not interfere with trials, but is subject to modification or change by legislative action should the Legislature and the Governor so decide; and

WHEREAS, The Judicial Council recognizes the responsibilities of the coordinate branches of the government in this matter and has been advised by the committee that it can complete its work by the end of 1966;

Now, therefore, be it resolved by the Judicial Council that it does hereby adopt the following temporary rule:

Rule 981. Special photographing and recording (new)

During the period this rule is effective the provisions of Rule 980 shall not apply to the photographing or recording of court proceedings carried on by the Assembly Committee on Fair Trial and Free Press, provided that the court involved and the judge presiding and all the parties, attorneys, witnesses and jurors participating in the trial give their consent thereto, and provided further that any photographs and recordings so made will be used solely for the work of the committee and will not be used for broadcast or news purposes or for any commercial purpose. This rule shall take effect on June 1, 1966, and shall continue in effect to and including December 31, 1966.

THE HEARINGS IN LOS ANGELES

Supreme Court Chambers, December 6–7, 1965

MEMBERS OF THE JUDICIARY TESTIFY

Two municipal court judges—both women—addressed the committee in Los Angeles. Roberta Butzbach and Noel Cannon were two of the most outspoken critics of Rule 980, and it is of some significance that both have presided with television cameras present. Judge Cannon on a regular basis in traffic court, Judge Butzbach as part of a special experiment.

The two judges joined in an attack on the theory that televising trials could prejudice potential jurors. Judge Cannon said it is as unfair to postulate this as it would be to postulate that a judge would be prejudiced by reading newspaper accounts of a case. She said judges and citizens "should not live in ivory towers. They must be aware of what's happening around them."

Judge Butzbach voiced similar sentiments and even went one step further. She said television, far from having a detrimental effect on viewers, would have a beneficial effect. Citizens would become familiar with the "operations and language of the law" if they watched actual trials on television, she said.

Both women objected to the discussion of fair trial and free press as a conflict, saying the rights reinforce and guarantee each other. They are inseparable, not mutually exclusive, they said.

> *"Liberties which exist under no other system of government exist because the courts are there to protect them. If these liberties are to endure, the people must again learn the processes of justice."*
>
> ROBERTA BUTZBACH
> Judge, Los Cerritos Municipal Court

Judge Butzbach traced the history of public trials from the days of William the Conqueror through the signing of the Magna Carta to Shakespearean times.

"Only once did England experiment with a court held behind closed doors," she said. "The Star Chamber has ever since been a symbol for injustice. Legal historians tell us the proceedings themselves were not unfair, but the fact of secrecy was so abhorrent to the English people that this alone made the proceedings suspect."

The judge said television enables citizens to "become educated in the concept of a rule of law while being entertained. Must an interest in court proceedings be condemned because it presents the fascination of high drama?"

Assemblyman Willson asked the witness if the use of "unobtrusive television" during one of her court sessions "would so influence you as a judge that you couldn't render a proper verdict in a proper case?"

Judge Butzbach said she "couldn't conceive of what difference it would make having just another piece of equipment there." She said she would not make a different decision than she would make if there were no one there except the litigants and their attorneys.

"The issue has been joined as free press VERSUS *fair trial. I submit free press is not an adversary of fair trial, but, on the contrary, free press is an ingredient of fair trial. The press is the watchdog of the public."*

NOEL CANON
Judge, Municipal Court, Los Angeles

Judge Cannon reminded the committee that judges are "answerable to no one—to no one but the public. The exclusion from the courtroom of radio, press photography and television, censors the public's view of the judicial process."

This is supportable, she said, "only where free press actually denies fair trial. That free press does not deny fair trial in every case is basic."

Judge Cannon stressed the educational value of courtroom television, noting the 47,000 traffic fatalities recorded annually in the United States, "caused primarily by ignorance of the law. Television in the traffic court can prove a powerful and painless educational device in explaining the Vehicle Code to the public."

Television is already being used in the new Los Angeles Traffic Court, "without jeopardizing fair trial," Judge Cannon said. "The television art has progressed to the point where entire trials can be televised invisible to courtroom participants.

"Should not the courts take advantage of the space age and have the best of all possible worlds?" she asked.

The judge's vigorous defense of courtroom photography included—in response to a question from Assemblyman Bagley—the contention that not even the defendant should have the right to exclude cameras.

"Take a defendant that is *guilty, guilty, guilty* and has managed to bribe the judge or jury. Naturally, he would not want the evidence coming out," she said.

SPOKESMEN FOR THE BAR

More attorneys testified at the Los Angeles hearings than members of any other profession. Despite the diversity of their specialties—two men representing newspaper photographers, one representing a bar association, one representing a media association, one representing a civil liberties organization, one representing himself and even one district attorney—the attorneys were virtually unanimous in their condemnation of Rule 980.

Both Edward Shattuck, president of the Los Angeles County Bar Association, and Robert Neeb, Jr., counsel for the Greater Los Angeles Press Club, criticized the dichotomy of fair trial versus free press. The assumption of a conflict between the two is, Neeb said, a "false premise."

The only prosecuting attorney among the committee's witnesses was Lawrence Drivon, district attorney in San Joaquin County and president of the California District Attorneys Association. Drivon admitted many prosecutors fear television will encourage theatrics in the courtroom, but he suggested the decision on the presence of cameras be left to the trial judges. "The trial judge is in a much better position than an appellate court, than the Legislature, than the Judicial Council to know what is going to be appropriate and what is going to be inappropriate," he said. "He knows the prosecutor, the defense lawyers and the general nature of the case. Generally, he also has some idea of the reaction of the public."

"We think the 800 judges of California are quite a group of men, and we say that the matter of photography (in court) should be left with the individual judge."

CARYL WARNER
Chief Counsel, California Press Photographers Association

Mr. Warner said the entire subject matter of Rule 980 should not be decided by the Judicial Council but by the State Legislature itself as a political matter involving the freedom of the people. He suggested the adoption by the Senate and Assembly of a concurrent resolution saying the matter should be left with the trial judge. With this guideline from the Legislature, the Judicial Council might be inclined to rescind Rule 980 which "deprives the public of a closeness to the courtroom."

"Restriction of the photographer or the broadcaster in the courtroom during proceedings, and also during recess, is the first step in total abridgment of what is the basic right to know on the part of the people of California."

PAUL CARUSO
Associate Counsel, California Press Photographers Association

Mr. Caruso warned that logical extension of Rule 980 could enable the banning of photographers and broadcasters from "any place of confinement."

"The county jail could be out of bounds next, and the photographers and broadcasters could take their pictures from the corner of 10th and Broadway or by telephoto lens from Spring Street in front of the Federal Building," he said.

Mr. Caruso said photographers have been allowed in courtrooms during recess for "hundreds of years," and "I know of not one case where any irregularity or injustice has resulted."

When asked by Assemblyman Foran to defend this statement in light of the Texas Supreme Court's reversal of Billy Sol Estes' conviction, Mr. Caruso said the "number and mass of equipment was a large contributing factor. If you walked into the Billy Sol Estes scene, you saw 12 television cameras and the cables all about the courtroom. You must immediately think this had a circus-like atmosphere.

"But you walk in that same courtroom and there is one man with a hand camera and a proportionately lower amount of lighting, then I would say, well, this is a matter of public interest . . . and I can understand the people wanting to know."

With only one camera, Mr. Caruso said he not only did not think the courts would have reversed Estes' conviction because of the "circuslike atmosphere," but that "this element would not have been mentioned."

Assemblyman Willson questioned Mr. Caruso about the use of television in the murder of Lee Harvey Oswald making it "impossible, or nearly so, to obtain an unprejudiced or unbiased jury."

Mr. Caruso replied, "If a juror wants to sit on a jury . . . he will sit on that jury and tell you he has formed no opinion . . . I don't think we will ever have a jury that is completely impartial. There are always those jurors who are prejudiced when they take that jury box, but I don't think we are ever going to eliminate their prejudice by the avoidance of any photography.

"Every photographer, and, incidentally, every broadcaster, has as basic a right to pursue his occupation as has the man who comes to court with a notepad and a pencil," Mr. Caruso contended. "The restriction of the photographer or broadcaster in the courtroom during proceedings—and also during recess—is the first step in the possible total abridgment of what is the basic right to know on the part of the people of California.

> *"The Los Angeles County Bar is unwilling to accept the proposition that a fair trial and a free press are inherently antagonistic, but we have taken the position that if both are to be preserved, voluntary restraints are required in the activities of both the media and the bar. We now have Rule 980 which places limitations on photographing, recording, and television broadcasting in the courtroom. This rule should be given an opportunity to demonstrate its workability, both by the media and the bar."*
>
> EDWARD S. SHATTUCK
> President, Los Angeles County Bar Association

Because of illness, Mr. Shattuck did not appear as a witness but submitted statement for inclusion in the transcript.

Mr. Shattuck contended that solutions to the Rule 980 problems are still in the process of being sought by across-the-table discussions between representatives of the media and the bench and bar. He advised that the State Legislature "should not close the door to continued exchange of ideas to resolve the problems."

> *"Rule 980 is based upon the theory that you cannot have the preservation of the balance of fair trial and free press . . . . The reasoning is: The taking of one picture in any courtroom during court sessions or during recesses automatically prevents a fair trial. Under the rule of logic, if you start from a false premise, you are going to end up with an answer that has a falsity in it. Therefore, I submit that the rule that we now have has to be changed, and one of the problems is how to change it."*
>
> ROBERT NEEB, JR.
> Attorney and Counsel, Greater Los Angeles Press Club and Radio and Television News Association of Southern California

Mr. Neeb cited the famous California case of *People v. Stroble*, a gruesome murder case involving a little child as the victim, and the wording of the State Supreme Court decision regarding whether television, radio and newspaper photography coverage of the trial in Los Angeles Superior Court was prejudicial to the defendant.

"Television was allowed in the courtroom during the proceedings," Mr. Neeb recalled, "and in one instance they actually photographed for live television the jurors sitting in the jury box while the court was going on. This reached the Supreme Court because Stroble was convicted and sentenced to death, and it went up on the automatic appeal.

"One of the questions was: What about this television? It was admitted in all the briefs that TV had been in the courtroom during session, had photographed lawyers, parties, witnesses and the jury. Now keep in mind the base of this rule which says you cannot have a fair trial if you have a picture in the courtroom.

"Now, what does the Supreme Court say about that case? They had the case directly before them as to what to do about a case that was widely televised and photographed. The defendant complained about this. It was one of his points on appeal, that he didn't have a fair trial.

"The Supreme Court, in 36 Cal. 2d at page 621, has in it the part about televising the jury during the session, the same jury that had to decide a man's life or death.

"'The high court said: 'We can also assume'—now note this word *assume*—'that it was improper.' The court doesn't say that it *was* improper, or that there was no fair trial; the justices just say 'we assume that this wasn't quite proper.'

"And they go on: 'We assume that it was improper to allow the taking of news photographs or televising of scenes in the courtroom.'

"Then they go on—and listen to the wording of your own Supreme Court: 'But there is no indication that the jury's verdict was influenced by the taking of pictures or the televising of courtroom scenes.' Your Supreme Court has said the base of the rule now adopted is not that."

Mr. Neeb also cited the famous case of *Kirstowsky v. Superior Court* in 1956 as a demonstration of the principle that judges already have complete plenary power to protect the rights of an accused, or any litigants or any witness. In this case the superior judge excluded everybody from the courtroom in the trial of a woman for murder, on the grounds that her defense testimony was so salacious "that I couldn't get it out of me before people."

In the Kirstowsky case, the California appellate court held that you can't have a private trial in California, Mr. Neeb pointed out, adding:

"The court held that no judge has the right to exclude the public or the press. It said that the judge could have—and this is the major point—in the interests of justice under the laws of Sections 124, 125, and 128 of the Code of Civil Procedure, excluded everybody to let the defendant testify, *but after the testimony, he had to open it up to everybody.*

"So you see, embodied in the case law of our state is complete plenary power in the judges to act if they think it is necessary in any case to protect the rights of the accused, or any litigants, or any witness."

Mr. Neeb concluded with this analysis: "A lot of people say the issue is, shall television or the newspapers have rights? I say the issue is, shall the public have rights? This case says the right to public trial—contrary to popular belief—is not a defendant's right. It's the public's right, yours and mine and everybody else's."

Replying to a question by Chairman Willson as to how a legal review of the judicial rule can be obtained through a test case in the courts, Mr. Neeb said:

"I think judges are supposed to be able to admit a mistake if they make one. The proper procedure—and I have suggested this already to the news media—would be a court test based on the cited cases and code sections to determine whether or not the rule goes beyond the power of a committee or a commission . . . You might end up in the Supreme Court of the United States."

"I must say that the right of fair trial has no peer when there is a conflict between freedom of the press and fair trial. . . . I don't think that a court ought to have the discretion to decide whether or not the television or mass communication media is going to sit upon a trial—or at least not the absolute and sole discretion. . . . I submit that as long as we have the concept of presumption of innocence, that where the defendant doesn't want publicity, he or she ought to have the right to say to the press, 'Leave my courtroom; I prefer to try this case before the judge and jury only.' I would like this committee to consider a rule that would recognize the principle that a fair trial is the basic whip of liberty. There can't be any dispute about the importance of a defendant's liberty as against the importance of selling newspapers."

HUGH R. MANES
Hollywood attorney

Several instances of pretrial publication of information prejudicial to defendants he was representing were related to the committee by Mr. Manes.

He urged passage of a statute giving defendants the right to seek damages from prosecutors, police, sheriffs and other law enforcement officers who furnish the press media with prejudicial pretrial information, which, he said, is not made available to defense attorneys.

"I am less concerned," Mr. Manes said, "about the ability of a newspaper or television station to sell a product, news or commercials that surround the news item, than I am about the right of an accused person to have a jury which does not receive pretrial information that would not be allowed in the courtroom trial itself. What I am asking this body to do is dry up the sources of information. The public hasn't any right to know before a trial."

"Insofar as Rule 980 goes beyond prohibiting coverage through television or photography of an actual court proceeding and insofar as it bars photographing or recordings during recesses, I think it goes too far."

A. L. WIRIN, Los Angeles
Counsel, American Civil Liberties Union

Mr. Wirin immediately exposed what he described as "my bias" by testifying that if he had a choice between a free press and a fair trial, he would live in a society which had a free press. He said he believes the two great rights—free press and fair trial—can be reconciled, since the public should have the right of access to the administration of justice.

"I think one has to balance these rights," he explained, "and I arrive at the valance of barring photography during a court proceeding but allowing it at all other stages. Neither right can be absolute, and both have to be reconciled with each other. When it's out-of-court coverage, I think the freedom of information should prevail. I draw the line at the door of the court."

"The basic problem appears to be one of an apparent conflict between these two basic constitutional rights. I say apparent, because I believe the conflict is more apparent than real. There cannot truly be a fair trial without a free press. A free press is vital in the administration of justice, particularly of criminal justice. It is necessary for the public to know and understand the functions of our judicial processes. There is no other complete way for the public to become informed except for the news media. I believe that the constitutional right of a public trial in a criminal case is a right belonging to the public as well as to the defendant."

LAWRENCE DRIVON
District Attorney, San Joaquin County; President California District Attorneys Association

Expressing his own personal views and not those of the association, Mr. Drivon said the real problem appears to be how to curb or cure the excesses of both the news media and of public bodies like the Judicial Council. He called for exploration of methods of "self-correction."

He cited instances in which it would be the duty of the public prosecutor, "for the protection of the public which he serves," to inform the public of particularly aggravated cases. For example, he said that if there is a widespread bunco ring operation in a community, the public should be informed of the modus operandi thereof "so that members of the public can protect themselves through knowledge."

"You have to leave this type of thing up to the judgment of the prosecutor," Mr. Drivon contended. "If he makes a mistake, the electorate at the next election will take care of the situation, I'm quite sure."

Mr. Drivon said most prosecutors "are opposed to photography and certainly to TV in the courtroom during the process of the trial because we are fearful of grandstanding and theatrics." But he said there would be no prejudice to a fair trial if pictures were taken at recesses or before or after the adjournment of court.

"This type of thing can be taken care of by the trial judge himself," Mr. Drivon concluded.

BROADCAST INDUSTRY SPOKESMEN

Witnesses from the radio and television industry included a television executive and a working radio newsman. Both men called on the Judicial Council to reconsider its action and, in doing so, to keep in mind the significant, longstanding role the press has played in world history—particularly recent American history.

As Elton Rule, vice president of the American Broadcasting Co., pointed out, "It was television which brought astronaut Ed White's walk in space into the living room. It was television which brought the launching of *Gemini 7* to the people. And, even though only four presidential campaigns have been carried by television, the greatest proportions of our population think of these campaigns solely in terms of television."

No medium capable of exposing so many to so much should be prohibited from entering a courtroom and showing all America how justice operates, he said.

> *"Let me make clear that we are not criticizing or condemning the structure of our judicial system. California has one of the most modern and functional judicial systems of the 50 states. Reforms effected during the past 20 years have made it one of the best, if not the best, judicial systems in the nation. The role of the State Judicial Council is vital. The council has led the way—actually implemented most of the judicial reforms with the cooperation of the Legislature. Why, then, at this critical point, has the council chosen to turn backwards in time by adopting Rule 980?"*

ELTON H. RULE
Vice President, American Broadcasting Company; General Manager, Station KNBC-TV, Channel 7; President, California Broadcasters Association

As the top official of the organization of the television and radio broadcasting stations and networks operating in California, Mr. Rule pointed out that the unilateral action of the State Judicial Council November 26, 1965, in banning all photographic and electronic "tools of modern journalism" from courtrooms in this state has an equal impact upon a large segment of newspapers and magazines and their photographers as it has upon radio recorders and television and motion picture cameras.

"It is our firm conviction," he said, "that the courts of this state and nation belong to the people. Our courts are not the property of judges, district attorneys, lawyers or juries.

"This being so, we maintain that the inherent powers of the court are sufficient to deal with individual violations of broadcast newsmen, when and wherever they may occur.

"But even more important is the *public's* right to know. This right embraces more than simple or complicated news coverage through electronic journalism, or the presence of press photographers in courtrooms.

"It is the right which guarantees that our courts will not evolve into chambers of secrecy, that the dignity of our courts shall not be de-

stroyed in a shroud of darkness, that we shall guarantee continuing respect for American justice. It is the *public* which ultimately guarantees our concepts of justice through court procedures."

The Elmo Roper survey of 1963 showed that 53 percent of all Americans look to the newspapers as their basic source of news. Another 55 percent look to television for their news and information, and 29 percent turn to radio as their basic news source.

"Thus, with the implementation of Rule 980, the public is being deprived of *the best* news coverage," Mr. Rule noted. "By qualifying our coverage of courts—through elimination of the tools of our trade—Rule 980 has the effect of depriving half the public of complete and acceptable coverage. This is not an action to be taken lightly. *There is no reason at this time for Rule 980.*"

Consideration of two main factors should be sufficient to have the rule repealed, Mr. Rule said. First, the technology of electronic journalism has made great advance in the last 15 years and still is making rapid strides in the fields of handheld, portable TV cameras, highly sensitive directional microphones, and revolutionary optical developments.

Second, the sociological changes of the population explosion and the space age are drying up former personal sources of public information. The town forum, as such, has disappeared. The courthouse steps no longer serve as the nerve center of the community. "Main Street" has all but vanished.

"Thus, the expanding obligations of the mass media to provide information are being spelled out in unmistakable terms," Mr. Rule concluded. "The traditional 'watchdog' role of the press has been expanded to include the electronic areas of journalism. Literate Americans look to us for news."

"A reciprocity is needed between broadcasters and judges, attorneys and law enforcement authorities. A schism of misunderstanding exists between the field of electronic journalism and members of the bar. The unfortunate decision by the California Judicial Council on November 26, 1965, is indicative of that gap."

EDMONDE A. HADDAD
News Editor, KPOL, Los Angeles; President, Radio and Television News Association of Southern California

Mr. Haddad proposed a national conference of top newsmen and influential judges and attorneys to exchange views on "free press—fair trial" and to reconcile the divergent approaches of the bar and the broadcast press through compromise and agreement.

"Broadcast newsmen simply cannot supinely submit to rulings which clearly abridge the constitutional guarantee of a free press," he said.

"First, we would like very much to initiate dialogue on this subject with members of the bar and bench. Second, broadcasters would draft a code of behaviour and seek approval of it from other broadcasting and press organizations. Third, we are prepared to investigate the possibility of pool coverage of news events where it appears that too much physical equipment would make for serious interference with the

FOR THE PRINT MEDIA, WIRE SERVICES AND PUBLISHERS ASSOCIATION

Newspapermen who testified before the committee seemed less concerned with the immediate effect of Rule 980 on television cameramen and their own still photographers than with the "dangerous trend" that rule could establish.

"We should not be discussing by what methods we can limit press access to information. Rather we should be seeking new means to destroy the trend toward secrecy in public function from the White House to the smallest police precinct," said John Jopes, editor of the Ontario *Daily Report*.

Larry Sisk, managing editor of the San Diego *Tribune*, issued a similar warning. "The invoking of these new rules would set the precedent and establish the right for other arbitrary curtailment of the public's access to its own institutions," Sisk said.

And Robert Studer, managing editor of the Alhambra *Post-Advocate*, reminded committee members that continued infringement on the rights of the press could lead to a "return to the old-time 'rubber hose' kind of policework. It is the constant scrutiny of the press that prevents our courts from becoming star-chamber sessions where bad justice can be covered up by secrecy."

Lone dissenter among the newsmen was Joe Nevens, managing editor of the Monterey Park *Progress*. He supported Rule 980 and a strict regulation of press coverage of all crime news because, he said, the press has often deprived citizens of a fair trial.

Nevens said the presence of cameras in the courtroom might prevent judges from maintaining proper decorum. He also warned that television coverage of trials in brief excerpts could "catch the witness or counsel in an embarrassing situation just because it's eye appealing or newsworthy. It would not carry the impact of what is going on."

"Incompetency and dishonesty cherish a mania for secrecy. . . . Discriminatory or preferential barring of photographer-reporters from the public's own courthouses, courtrooms and corridors—when there isn't a hint of 'clear and present danger' of interfering with the courts—not only is contrary to the Constitution of the United States and of the state of California and contrary to the intent of state laws but it conflicts with landmark decisions of the State Supreme Court. . . . If reporters using cameras and recorders can be barred from performing their duties, the next action by the Judicial Council could be against reporters using pencils. . . . The Legislature must take positive action to nullify this Judicial Council rule, and to clarify beyond all doubt that there is to be no interference with the inherent right of the public to be informed about its own business."

LARRY SISK
Managing Editor, the San Diego *Evening Tribune;* for the Copley Newspapers

Mr. Sisk quoted information assembled by the Freedom of Information Center at the University of Missouri, showing that of the estimated 40,000 jury trials involving major crimes in the United States during 1963–64 and until March 1965, appeals were filed in only 101 cases on various grounds of possible community prejudice.

Of the 101 cases, he said, there have been only five reversals by the U.S. Supreme Court, and no writ of relief was granted on the narrow argument that publicity by news media had made a fair trial impossible.

Of the five reversals, he said, only two were on the grounds of presumed juror prejudice due to publication by the news media.

"Without arguing whether the decisions by the courts in these cases were right or wrong," Mr. Sisk commented, "they are mentioned specifically to show how *few* are the instances in which even presumed prejudice is upheld."

Mr. Sisk contended that a judge is the master of his court and should have the right to cite for contempt in a specific case where there is interference with the court.

"I, and most responsible editors everywhere, oppose any proposition to further limit the function of a free and responsponsible press. That is why I oppose the action of the Judicial Council and why I call upon the Legislature of California to override its edict. I warn this committee that proposals to handcuff news media and regulate the flow of information to the public will increase in years to come. These proposals must be rejected, just as the Judicial Council's ruling must be reversed."

JOHN JOPES
Editor, the Ontario *Daily Report;* Chairman, Southern California United Press Editors

Mr. Jopes made the point that in view of the fact that crime is increasing six times faster than the population growth, the whole trend toward secrecy in public function should be reversed.

"Every new attempt to tie the hands of journalism, such as the California Judicial Council's edict to ban the use of news cameras in courtrooms during recesses, puts new chinks in our constitutional right to freedom of the press," he said. "It brings us closer to the Star Chamber. If there ever was a time in history when newspaper should extend their interests in and coverage of major crime, it is now."

"We have always conceded the fact that the judge should control his courtroom. And perhaps there are circumstances when a judge would, on mutual agreement with the news media, decide not to have a trial televised or photographed."

BEN MARTIN
General Manager, California Newspaper Publishers Association

For the record, Mr. Martin reiterated the association's opposition to Rule 980. He urged the Judicial Council to witness demonstrations by the news media of the modern techniques of covering a trial with photography and microphones.

"The press and the bar share tremendous responsibility in keeping the people informed in a society where there is greater freedom than any other place on earth. One of the greatest threats to this freedom is complacency. Unless the bar, the Legislature, the judiciary and the press are alert, the liberties guaranteed by law will not remain fully protected. Whenever there is a dictatorship established, the dictatorship first muzzles the press, then strips the judiciary and the governing bodies of their powers of administering justice by law."

DAVID N. SCHUTZ
Editor, the Redwood City *Tribune;* Secretary and Director, The Associated Press Managing Editors Association

Mr. Schutz said the newspaper profession feels that the allegation of "trial by newspaper" is so oft repeated that the legal profession tends to accept it as fact.

"Stated simply," Mr. Schutz explained, "it implies that innocent men are being railroaded to jail because of improper pretrial publicity. Newspaper men do not believe this to be true. Lawyers have never been able to name even one case. . . .

"The first thing we ought to observe about freedom is that it is not absolute. It must be discharged with responsibility. The right of a free press is not freedom of newspapers. It is the right of a democratic society to full information. The right of a fair trial is not the right to defeat a just punishment."

Mr. Schutz said his association took the position that the Judicial Council's action on Rule 980 "is a violation of the First Amendment".

"The problem of how freedom of the press can be maintained in the face of growing crescendo of attacks upon the basic American freedom is of vital concern to me and to my colleagues in the profession of journalism. It is also of vital concern to the readers of my newspaper and those of every other newspaper. And to the viewers of every television station. And to the listeners of every radio station. The problem is whether any pretext, no matter how well intentioned, can serve as the vehicle to deny our society its hard-won right to be freely and fully informed. Certainly the camera has become as basic and important a tool in the reporting of the news as are the pencil and the typewriter. Modern photographic technology has improved to the point where accusations that news photographers, of necessity, must interfere with the orderly conduct of a trial or with the dignity of the court, or that they constitute a threat to the right of the accused to a fair trial, are both unfair and uninformed."

ROBERT STUDER
Managing Editor, The Alhambra *Post-Advocate;* Chairman Southern California Associated Press News Executive Council

Mr. Studer conceded that there have been isolated instances of journalistic irresponsibility, but he contended the press generally is as concerned over the right of an individual to a fair trial as are the courts, the judges, the bar and the Legislature. He cited six already existing safeguards for the right of the accused in the event such right is jeopardized.

"Rule 980 seems to me to be like using a bulldozer to weed the garden," he commented. "Sure, it does a fine job of weeding, but it's pretty tough on the flowers."

"I think for the most part that newspapermen are responsible, at least as responsible to their profession as lawyers are to theirs . . . I am a working-type newspaperman. I am aware of only one study of the number of times it has been contended that the newspapers have violated someone's right to a fair trial. This was conducted by the Hoosier State Press Association for the 1963-64 period. Of all the hundreds of thousands of criminal trials, from misdemeanors up to felonies, that were prosecuted in this country in that time, 60 contentions were made that someone's rights had been violated by improper news stories. Sixty cases were carried to appellate courts on that contention, and of those 60, 11 reversals occurred . . . If these statistics are accurate, there hasn't been any wrong of great consequence . . . I have heard questions and statements about fair trial publicity. If a man is arrested by the police, that is a fact, it is not a contention someone is making. And it has to do with the ability of the police department to get its job done. The arrestee's guilt or innocence is not being argued. But he has been arrested. I think that fact should be reported. If the man is subsequently charged with a crime, that fact should be reported. If the man is not charged with a crime and is released, certainly that fact should be reported."

ROBERT SCHMIDT
Court Reporter, Long Beach
Independent Press Telegram

Mr. Schmidt told the committee he is not in favor of Rule 980.

"I feel that it is high time that the press is made to account for its abuses. It is a commercial entity, make no mistake about that. The press should be brought to the bar of justice just like any other lawbreaker. The concept that the press is above the law should be voided."

JOE NEVENS
Managing Editor, The Monterey Park *Progress*

Mr. Nevens was the only newsman witness to take a stand in favor of Judicial Council Rule 980 on the banning of photographers and television cameras in courtrooms.

"It is not that I have an animosity against my colleagues in TV and radio," he explained, "it's just that I feel that the very nature of their physical equipment and reproduction qualities of their work suggest

the possibility that a witness or participants (in a trial) would quickly join the ranks of actors and so forth, and even the judges and counsels in question could have this feeling altered—they might not be able to continue the decorum the court demands in obtaining justice."

Mr. Nevens said he has attempted for many years—without success—to stimulate the national journalism society, Sigma Delta Chi, to lead the way in drafting a code which the press media would adhere to voluntarily in disputed cases of free press versus fair trial.

He cited the Lucille Miller murder trial mistrial and the Billy Sol Estes case as instances in which the press media clearly violated the right of defendants to a fair trial.

"The goal of the court is to obtain truth and justice, not to entertain the masses," Mr. Nevens commented in urging support for his proposed federal statute making it a crime to furnish or publish information not already properly filed with the court in a criminal litigation.

FOR SIGMA DELTA CHI AND PHOTOGRAPHERS ASSOCIATIONS

Two spokesmen for press photographers associations and one spokesman for Sigma Delta Chi spent considerable time before the committee explaining the feasibility of using modern television and radio equipment in a courtroom without disrupting legal activities.

Charles Waite—speaking as an attorney, a radio newscaster and a member of the Sigma Delta Chi national board—said he has seen demonstrations in which "most of the participants were unaware of a broadcast. This can be done because in the State of California, virtually all courtrooms are equipped for electronics, microphones and public address systems."

Modern techniques and miniaturization equipment could be used effectively in these courtrooms, he said.

Fred Bauman and Nelson Tiffany, both press photographers, charged the Judicial Council with ignoring technical advances made in photography. They said trials could be filmed with unobtrusive cameras and existing lighting.

Another "professional" appearing before the committee was Walter Wilcox, professor of journalism at UCLA. Wilcox spoke at great length about his attempts to convince university officials to open Academic Senate meetings to the press. Like the newspapermen who testified before him, Wilcox voiced concern for the trend toward secrecy in the conduct of official business, and branded as "specious" contentions that press coverage of faculty meetings would be "superficial and sensationalistic" and would inhibit professors from making "far out and seemingly unrealistic remarks designed to stimulate discussion and not as their own positions."

> *"I think it would be a far stronger and clearer expression of government's preservation of the public's right to know, if nullification of Rule 980 were to be made by the State Legislature. Since the Judicial Council's rulemaking powers are limited by the Constitution to those which are not in conflict with existing or future legislative enactments, it would seem to me no substantial legal problem exists in the way of such nullification by the Legislature, if the legislators, in their consideration of the problem, agree that this is a desirable end and, more importantly, a necessary act."*
>
> CHARLES WAITE
> Attorney, Chairman, Freedom Information Committee, Los Angeles Chapter, Sigma Delta Chi; Western States Director of Freedom of Information, SDC's National Board

As both an attorney and a radio newsman, Mr. Waite is uniquely conversant with the problems posed by Rule 980 for the courts and legal profession on the one hand and the various news media on the other.

Mr. Waite cited the strong stand taken December 6, 1965, by the board of directors, Los Angeles Chapter, Sigma Delta Chi, the professional journalism society, protesting and opposing Rule 980.

"The strength of the SDC feeling," he said, "is that the rule is a genuine step backward in the important area of the right of the people to know what their government is doing. We feel the rule was passed with entirely inadequate showing of its supposed need."

> *"The Judicial Council was extremely prejudiced and entered the hearing (on Rule 980) with preconceived objections and preconceived decisions on the matter."*
>
> NELSON TIFFANY
> President, California Press Photographers Association

Mr. Tiffany complained that Rule 980 is "arbitrary" and was approved "without a fair hearing from the media."

He said the use of photographers during United Nations General Assembly session "demonstrates what might be done in courtrooms in the future in California." United Nations delegates have not objected to the presence of cameras, Mr. Tiffany reported.

"The California Press Photographers Association is on record as favoring a soundproof booth with perhaps a two-way mirror glass from which to photograph. This would certainly do away with the argument . . . of distractions. In many cases, even the judge would not know a picture was being taken," he said.

Tiffany, CPPA president, cited the 10-year experience of Colorado courts in giving trial judges the discretion to admit the taking of photographs in the courtroom or the broadcasting by radio or television of court proceedings.

"We feel the Colorado rule . . . should be adopted in this state," Mr. Tiffany said. "We do not understand this sudden emergency measure by the California Judicial Council to exclude us. The 17-to-1 vote demonstrates, I think, that the Judicial Council was extremely prejudiced and entered into the hearing with preconceived objections and preconceived decisions."

> *"You ban the cameras today, and tomorrow the world may find itself on the outside, banned by a similar rule. . . . What are our courts afraid of?"*
>
> FRED BAUMAN
> West Coast Director, National Press Photographers Association

In adopting Rule 980, the State Judicial Council has failed to recognize the technological advances which permit unobtrusive camera and television coverage with miniaturized equipment, Mr. Bauman contended.

"We cannot and must not impede progress," he explained. "The artist's sketchpad of the past has become the television camera and the news photo of today. Why penalize the news media industry for its technological advancement by a code of ethics established years ago in the era of flashpowder?"

VIEWS OF AN EDUCATOR

"Those of us who have studied the matter at UCLA and at other universities are becoming convinced that the dialogue concerning free press and fair trial has come full circle, and that further debate without empirical evidence is pointless. Everything has been said that can be said. We are, therefore, undertaking behavioral science research in the hope that we can provide some new facts with which those concerned can illuminate this dialogue. At present, we have a modest study underway to determine the initial reaction of a prospective juror when exposed to news of confession, previous criminal record, pretrial evidence and the various combinations thereof. This study, we feel, is a beginning only, but it may well set up guide lines with which we can follow the juror through the trial process."

PROFESSOR WALTER WILCOX
Chairman, Department of Journalism, UCLA

THE SAN DIEGO HEARING / "AN UNOBTRUSIVE DEMONSTRATION OF NEWS COVERAGE"

CITY COUNCIL CHAMBERS, JANUARY 31, 1966

"The great complaint has been that reporters with their cameras and lights are obtrusive and interfere with the normal conduct of a trial or hearing. This need not be the case. In these chambers [the council chambers in the City of San Diego Administration Building] you have not seen a single light glaring in your faces or the faces of the witnesses. There have been no cumbersome cables or wires, no bulky equipment, no reporters running around. In a word, we of the press have been unobtrusive. And yet we have been here, covering every second of these proceedings . . . The demonstration you have just seen [a video tape playback] is only one phase of the total coverage. Still photographs also were taken, and without glaring flashbulbs . . . There are other journalistic tools, and most of them have been operating here this morning. Seated at the press table, a radio reporter has recorded on audio tape the voices of all the participants. Again, in the glassed-in booth at the back of the room, two sound-on-film cameras have been recording both pictures and sounds of this event, while at the press table another reporter has been taking silent film pictures of witnesses and committeemen. I trust this demonstration has proved what news media and broadcasters have contended—that court proceedings and committee hearings can be televised and broadcast without danger that justice, proper procedures and decorum will be jeopardized . . . We urgently request that a moratorium be declared to stay the execution of Rule 980."

GEORGE WHITNEY
Representative, San Diego County Chapter, Sigma Delta Chi

SPOKESMEN FOR SIGMA DELTA CHI / NATIONAL AND REGIONAL

"I plead with this committee to encourage the process of evolution in the whole field of communication between the courts and the public. Urge upon your fellow legislators the repeal of Rule 980, and at least restore us to the position where controlled experimentation with newsroom photography, broadcasting and televising of criminal trials may be continued on a progressive and evolutionary basis. It is essential, I believe, to good citizenship in the 20th Century."

RAYMOND SPANGLER
Publisher, the Redwood City *Tribune;* President, Sigma Delta Chi

Mr. Spangler quoted the preamble of California's Ralph M. Brown Act on the conduct of the public's business by public bodies, as follows:

"The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

It is fundamental error, Mr. Spangler held, to claim that, of the three great branches of public government—legislative, executive, judicial—the judicial is protected from public scrutiny. . . . Under present-day technical conditions, the ordinary citizen cannot obtain his information for himself. But he can or could at least be given a choice of alternative channels of information. To allow broadcasting by radio or television grants alternative sources of information to the public, and this choice should not be further curtailed. But it is curtailed by Rule 980.

Commenting on the majority opinion of the U.S. Supreme Court in the case of *Billie Sol Estes v. the State of Texas,* Mr. Spangler said:

"I venture that none of these Supreme Court justices has had any experience in a courtroom with a televised or broadcast trial. Lacking that experience, the majority opinion reflected a great deal of speculation. . . . The court apparently decided that the pen and pencil are the ultimate in communications and here, as in the Scopes trial in Tennessee, evolution must stop.

"The quotations of the majority indicate the court's confessed lack of knowledge on the critical point involved, to wit: the influence of television cameras and radio microphones on a jury, the witnesses and the court.

"In this connection the court said: 'Still, *one cannot put his finger* on its specific mischief and prove with particularity wherein he was prejudiced. . . . The conscious or unconscious effect that this may have on the juror's judgment *cannot be evaluated.* . . . The impact upon a witness of the knowledge that he is being viewed by a vast audience

is *simply incalculable.* . . . And even in the absence of sound, the influence of such viewing on the attitude of the witness toward testifying, his frame of mind upon taking the stand, or his apprehension of withering cross-examination *defy objective assessment.'*

"Obviously, the Supreme Court doesn't know the effect of televising upon the juror and the witness."

Asked by Chairman Willson to state Sigma Delta Chi's position on wanting individuals to receive a fair trial, Mr. Spangler concluded:

"We endeavor to raise the sights of newsmen everywhere. Since the Oswald and Ruby cases we have succeeded in having the major organizations involved in mass communications agree to a code which encourages pool coverage. We are making progress in this direction."

"We have no punitive measures at all. It's agreements. It's a code of ethics that is being fostered by the various newspaper associations, by Sigma Delta Chi, by the people in the [news media] industry who get together after something like the Dallas affair and agree on measures and ways to cover these stories without having this thing occur again."

GUY RYAN
Assistant Managing Editor, the San Diego *Evening Tribune;* Regional Director, Sigma Delta Chi

Despite some "skeletons in the closet" and some "deplorable instances of abuse," the vast majority of newsmen are honorable and high-principled, Mr. Ryan contended.

"Efforts to raise the standards of journalism were going forward a long time before the recent urging by the Warren Commission report on the assassination of President Kennedy," he testified. "Self-regulation and constant emphasis on the fair and honest presentation of information will bring greater results and will be more lasting than any possible controls that could be contrived."

Mr. Ryan submitted a number of codes of ethics adopted by the Colorado Press Association, Southern Newspaper Publishers Association, American Newspaper Guild, National Association of Broadcasters, Radio and Television News Directors Association, American Society of Newspaper Editors, and the Richmond (Virginia) *News Leader.*

VIEWS OF ELECTED PUBLIC OFFICIALS

Two public officials, both responsive to the electorate, appeared at the San Diego hearing to offer testimony. The two men indicated they felt the obvious information and educational values to be derived from the broadcasting and photographing of court proceedings would far exceed any possible objections.

Joseph O'Connor, the Sheriff of San Diego County and the sole witness from law enforcement, joined County Supervisor Frank Gibson in saying the inclusion or exclusion of photographic and recording equipment should be at the "sole discretion of the presiding judge."

"The judges are men of learning and wisdom," Sheriff O'Connor said. "They were elected by the people on this basis, and being in the courtroom, they can best see when the rights of an individual may be jeopardized by anyone, including news photographers."

Supervisor Gibson said the judges are "solid men trying to administer justice fairly and still carry out their responsibilities to the citizenry." The judges, he said, would "cooperate in every possible way with the news media," but would not endanger the rights of the defendants.

"If there was violent objection [to cameras] on the part of the attorneys and the litigants . . . I would say that decision [to exclude cameras] would have to be the decision of the judge." Supervisor Gibson said in response to a question from Assemblyman Johnson. "He would have the authority to request that there be no coverage."

"I think the conduct of any individual, when he knows he is being recorded, is bound to be on the better side rather than on the worse side."

JOSEPH C. O'CONNOR
Sheriff, San Diego County

Sheriff O'Connor, a 24-year veteran in law enforcement work, was asked pointblank whether, in his opinion and experience, television in the courtroom would have any adverse effect on the conduct of witnesses or jurors. He replied in the negative.

He also testified he believes judges should be given the prerogative of determining whether news photographers and reporters with electronic equipment should be permitted in courtrooms.

"Judges are men of learning and wisdom," Sheriff O'Connor commented, "and were elected by the people on this basis, Since a judge is present at all times, he can best foresee when the rights of an individual may be jeopardized by the acts of anyone. I feel that the judge should have the final say."

"I know of no better means of communication than allowing a complete freedom of on-the-spot observations. We invite the newsmen as well as radio and television media to cover all of our meetings. I do feel strongly that the same courtesies should be extended in our courts, with the understanding that the judge of each court be vested with the authority to grant or refuse such coverage by the different media. This has been the practice in the past and, in my estimation, should be continued."

FRANK GIBSON
Member, San Diego County Board
of Supervisors

Mr. Gibson noted that there is television and radio coverage every week of the board of supervisors' meeting, "and it definitely is not a circus and never has obstructed the ascertainment of the truth."

"We find that the reaction from the public after the pictures are shown on television, the reaction of the people to statements that were made and the presentations that were made has always been certainly on a very constructive side," Supervisor Gibson said.

The supervisor said televising board meetings gives the public "A little better understanding, a little better idea of what actually is taking place. We are very much interested in inviting the [news media] people to our board rooms."

"After all, these [recording and televising equipment] are modern devices. Probably in 20 or 30 years this whole subject [free press—fair trial] will be considered ridiculous for having to fight it . . . I think we have appealed and are appealing to them [the bar] with facts of logic. With younger men, students coming out of school, we have made a great deal of headway. On the other hand, with fellows our age, it takes a very open-minded man to get him to change."

PAUL COMSTOCK
Vice President, Governmental Affairs, National Association of Broadcasters

The National Association of Broadcasters (NAB) has headquarters in Washington, D.C., and is composed of 400 television stations, 2,600 radio stations, and all the national television and radio networks.

Mr. Comstock testified that NAB does not impugn the motives of the Judicial Council in adopting Rule 980, and agrees with the council's concern to preserve the dignity and decorum of the courts.

"But we certainly do not agree with the methods chosen to attain these objectives," Mr. Comstock continued. "We do not agree to a total blackout of vital media of information."

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