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Sixth Amendment, Televising Trials, Chandler v. Florida

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Sixth Amendment • Televising Trials

Chandler v. Florida, 101 S. Ct. 802 (1981)

THE SUPREME COURT recently handed down a unanimous decision dealing with the respective rights of the press and defendants in regard to the televising of criminal trials. The case, *Chandler v. Florida*,¹ while explicitly stated to be consistent² with the Court's earlier decision in *Estes v. Texas*,³ has expanded the realm of media coverage of criminal trials beyond what apparently was permissible under *Estes*. The Court attempted to balance the competing constitutional guarantees of freedom of the press and the sixth amendment⁴ right to a fair trial. It held that while the presence of television cameras in the courtroom is not inherently prejudicial, the defendant must be allowed an opportunity to show that the presence of television cameras actually prejudiced his right to a fair trial.

Appellants Chandler and Granger, were charged with conspiracy to commit burglary, grand larceny, and possession of burglary tools in connection with breaking and entering into a well known Miami Beach restaurant. Normally, a crime of this nature would not be expected to generate a great deal of media interest, but Chandler and Granger were employees of the Miami Police Department at the time they committed the crime. Of further interest was the fact that the sole reason appellants were apprehended was that their radio conversations during the burglary were fortuitously overheard by a local "ham" radio operator.⁵

By the time Chandler and Granger had reached the pretrial stage of their proceedings, the Supreme Court of Florida had adopted what was at that time Experimental Canon 3A(7) of the Florida Code of Judicial Conduct, which in essence permitted the televising of judicial proceedings despite the objections of the involved parties.⁶ Appellants

¹ 101 S. Ct. 802 (1981). The vote of the Court was actually 8-0 with Justice Stevens taking no part in the decision. Chief Justice Warren Burger authored the opinion.

² *Id.* at 809, n. 8. The majority responds to Justice Stewart's insistence that *Estes* should be overruled by stating, "There is no need to 'overrule' a 'holding' never made by the Court." *Id.*

³ 381 U.S. 532 (1964).

⁴ As applied to the states via the fourteenth amendment's Due Process Clause.

⁵ 101 S. Ct. at 806.

⁶ 101 S. Ct. at 804-05. The initial provisions regarding the televising of trials were adopted in *Petition of the Post-Newsweek Stations, Florida, Inc.*, 327 So.2d 1 (Fla. 1976), and required the consent of all parties involved before telecasting of proceedings was allowed. However, it soon became apparent that the consent of both parties could rarely be simultaneously obtained. Thereafter, the consent requirement was abandoned in *Petition of Post-Newsweek Stations, Florida, Inc.*, 347 So.2d 402 (Fla. 1976).

argued via a pretrial motion that Experimental Canon 3A(7) was unconstitutional both on its face and as applied. The question was certified to the Florida Supreme Court which refused to rule on it based upon a lack of relevance to the charges against Chandler and Granger.⁷

Despite appellant's objection to televised coverage of their trial, the lower court permitted cameras to be present during all phases of the proceedings. At the conclusion of the case, only two minutes and fifty-five seconds of the trial were aired on television, with all of this coverage being devoted to presentation of the prosecution's case.⁸ Chandler and Granger were convicted by the jury on all counts and were later sentenced to seven years in prison followed by nine years probation.⁹

The decision of the trial court was taken to the Florida District Court of Appeals, which affirmed the lower tribunal. The District Court was of the opinion that appellants had suffered no harm because of the presence of television cameras at their trial. However, they did decide that the question as to the "facial" constitutionality of Experimental Canon 3A(7) was one of great public interest and thus certified that portion of the decision to the Florida Supreme Court. Once again review was denied, this time on the ground that the question was moot because of its decision in *Petition of the Post-Newsweek Stations, Florida, Inc.*,¹⁰ which made Experimental Canon 3A(7) permanent.¹¹

In appealing their convictions to the United States Supreme Court, petitioners argued that the presence of cameras in the courtroom during a criminal trial is inherently prejudicial, basing this contention on the court's previous decision in *Estes*.¹² *Estes* involved the prosecution for swindling of a locally well known financier whose case had received a great deal of publicity. At that time, Texas was one of only two states which

⁷ State v. Granger, 352 So.2d 175 (Fla. 1977).

⁸ 101 S. Ct. at 806.

⁹ Brief in Support of Jurisdiction at 11.

¹⁰ 370 So.2d 764 (Fla. 1979).

¹¹ The Florida Supreme Court was of the opinion that broadcasting of trials would increase public acceptance, awareness and confidence in the judicial process. The new Canon 3A(7) provides:

Subject at all times to the authority of the presiding judge to (i) control the conduct of the proceedings before the court, (ii) ensure decorum and prevent distractions, and (iii) ensure fair administration of justice in the pending case, electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts of this state shall be allowed in accordance with standards of conduct and technology promulgated by the Supreme Court in Florida.

370 So.2d at 781.

¹² Brief for Appellants at 25.

permitted telecasting of court proceedings.¹³ During the pre-trial of the proceedings there were as many as twelve cameramen in the courtroom, but live telecasting of the actual trial was prohibited during most of the trial. Also, the cameramen were placed in a specially constructed booth at the back of the courtroom which was designed to blend in with the remainder of the surroundings.¹⁴ Although no one opinion commanded a majority of the Court, *Estes*' conviction was set aside on the grounds that he had been deprived of the due process of law to which he was entitled under the fourteenth amendment. Four members of the Court were of the opinion that the presence of television cameras in the court made it impossible for defendants in criminal prosecutions to obtain a fair trial, and thus held that no actual prejudice need be shown as the situation was inherently prejudicial.¹⁵ Four other Justices rejected this per se rule, and further stated that petitioner had failed to show any actual prejudice.¹⁶ The deciding vote was cast by Justice Harlan, who felt that on these particular facts *Estes* had been deprived of due process of law. However, he refused to join the four Justices who insisted that the telecasting of criminal trials was inherently prejudicial to defendants.¹⁷

In dealing with petitioner's claim that *Estes* announced a per se constitutional prohibition against cameras in the courtroom, the Court in *Chandler* relied heavily on the opinion of Justice Harlan. Concluding that Justice Harlan had decided *Estes* solely on its facts, the Court held *Estes* not to be an absolute bar to telecasting criminal trials.¹⁸ Having reached that conclusion, the Court then confronted the issue of whether the practice of allowing telecasting over a defendant's objection was in fact unconstitutional. After discussing the benefits and detriments associated with

¹³ 381 U.S. at 535, citing STATE BAR OF TEXAS CANONS OF JUDICIAL ETHICS No. 28, 27 Tex. B.J. 102 (1964). The decision as to whether telecasting would be allowed was left to the discretion of the trial judge. Like the Florida Canon dealt with in *Chandler*, the proceedings could be broadcast despite the objections of the defendant.

¹⁴ 381 U.S. at 536-37 (1964).

¹⁵ The four members of the Court were Justice Clark, who authored the first opinion, and Chief Justice Warren, who wrote a lengthy thirty-four page separate opinion which was concurred in by Justices Douglas and Goldberg. The separate opinion of Chief Justice Warren also contains various photographs of the courtroom during both the pretrial proceedings, at which petitioner *Estes* attempted to have television coverage excluded, and the trial itself. 381 U.S. immediately following 586.

¹⁶ Dissenting opinion of Justice Stewart, joined by Justices Black, Brennan, and White. 381 U.S. at 601. Justice White also authored a separate dissent, joined by Justice Brennan. *Id.* at 615. Justice Brennan also wrote separately. *Id.* at 617.

¹⁷ 381 U.S. at 587.

¹⁸ The majority based this conclusion on statements by Justice Harlan in *Estes* to the effect that "at least as to a notorious criminal trial such as this one, the considerations against allowing television in the courtroom so far outweigh the countervailing factors advanced in its support as to require holding that what was done in this case infringed upon the fundamental right to a fair trial." 101 S. Ct. at 808 (emphasis added) citing *Estes*, 381 U.S. at 587 (Harlan, J. concurring).

the televising of criminal trials, the Court concluded that the Florida procedure did not, on its face, deprive defendants of their right to due process of law. The Court further held that appellants had failed to carry their burden of showing actual prejudice. Justices Stewart and White, who concurred in the result reached by the majority, felt that the decision could not be reached without specifically overruling *Estes*. Before analyzing the scope and future ramifications of *Chandler*, it is important to understand the initial reluctance of the judicial system to permit media coverage of its proceedings.¹⁹

From the outset, opponents of media coverage of criminal trials pointed to the trial of Bruno Richard Hauptmann as a prime example of potential for abuse inherent in media coverage of notorious criminal trials. Hauptmann had been charged with the kidnapping of the Lindburgh child.²⁰ At the time of his trial, community sentiment was leaning heavily against Hauptmann. There are reports of instances where observers of the trial would applaud and cheer testimony detrimental to Hauptmann, and occasions where those who testified as to his innocence were resoundly booed.²¹ A large part of the frenzy surrounding this particular trial was attributable to the tremendous amount of media coverage it had received. In response to what many in judicial circles viewed as the primitive circumstances under which the Hauptmann trial was conducted, the American Bar Association House of Delegates adopted Canon 35 of the Canons of Judicial Ethics prohibiting the taking of photographs during court sessions.²² Due to the rise of television, Canon 35 was amended in 1952, to prohibit the taking of motion pictures in the court room.²³ In 1972, the Code of Judicial Conduct replaced the old Canons, but the substance of Canon 35 was retained in new Canon 3A(7).²⁴ In the meantime, however, a number of states had begun to reject the underlying premise of these Canons and were permitting, in one form or another, telecasting of criminal

¹⁹ See generally *Chandler*, 101 S. Ct. at 803; *Estes*, 381 U.S. at 596.

²⁰ *State v. Hauptmann*, 115 N.J.L. 412, 180 A. 809 (1935), cert. denied, 296 U.S. 649 (1935).

²¹ 115 N.J.L. at 443-44, 180 A. at 827.

²² ABA CANONS OF JUDICIAL ETHICS No. 35 originally provided:

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recess between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.

101 S. Ct. at 804, n. 1 citing 62 ABA REP. 1134-35 (1937). It is interesting to note that there is no reference to the protection of a criminal defendant's interest in a fair trial.

²³ 101 S. Ct. at 804 citing 77 ABA REP. 610-11 (1952).

²⁴ E. THODE, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 56-59 (1973).

trials within their jurisdictions.²⁵ At present, there are 28 jurisdictions which permit television coverage of criminal trials,²⁶ although telecasting is still prohibited in the federal court system.²⁷ It is against this somewhat checkered backdrop that the decision in *Chandler* was evaluated by the Court and must be viewed by those attempting to understand it.

While *Chandler* may seem at first glimpse to paint with a very broad brush, on closer examination it is clear that the holding is actually a limited one.²⁸ Even though the majority opinion engages in discussion concerning the effect of telecasting criminal trials on the judicial system, there are four factors which indicate that the *Chandler* case may someday go the route of its predecessor *Estes* and be limited to its particular facts.

The first factor which serves to narrow the apparent broad scope of the holding is the concept of federalism. It would seem that the Court wished to make clear that it would defer to the judgment of the states on this question. The Court begins and ends its analysis of the case by stating that it possesses no supervisory power over state courts and is thus limited in terms of the scope of review.²⁹ The concept of federalism is further bolstered by statements such as "the states must be free to experiment"³⁰ and a quote from Justice Brandeis on the value of states as "laboratories" for social experiments.³¹ Further evidence of a deference to states rights is found in Chief Justice Burger's statement subsequent to *Chandler* that "the central point of that decision [*Chandler*] is the recognition that the United States Supreme Court is not a supervisor of state courts. Our jurisdiction begins only when some action transgresses the Constitution."³² As previously noted, telecasting is not permitted in criminal

²⁵ Television coverage of criminal trials was reported as early as 1953 in Oklahoma and 1955 in Texas. Lawton, *The Retreat of Canon 35 . . . Some Places*, in FREE AND FAIR, COURTROOM ACCESS AND THE FAIRNESS DOCTRINE 40, 41 (J. Kittros & K. Harwood ed. 1970). The premise of Canon 35 was explicitly rejected by Chief Justice Moore of the Colorado Supreme Court in *In re Hearings Concerning Canon 35 of the Canons of Judicial Ethics*, 132 Colo. 591, 296 P.2d 465 (1956).

²⁶ Winter, *Cameras in the Courtroom*, 67 ABA J. 277 (1981). Ohio S. Ct. R. 11 provides for telecasting of criminal trials. Also, the Ohio Supreme Court has recently held that the Codes and Canons which permit such televising are mandatory in nature, not discretionary. *State ex rel. Grinnell Communications Corp. v. Love*, 62 Ohio St. 2d 399, 406 N.E.2d 809 (1979).

²⁷ Fed. R. Crim. P. 53.

²⁸ The Court itself framed the issue in quite narrow terms: "Hence, we have before us only the limited question of the Florida Supreme Court's authority to promulgate the canon for the trial of cases in Florida courts," 101 S. Ct. at 807.

²⁹ *Id.* at 807, 814.

³⁰ *Id.* at 813.

³¹ *Id.* at 812 quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

³² Address to the Conference of Chief Justices (quoted in Winter, *supra* note 26 at 277). 5

trials arising in a federal court.³³ However, if this rule were to be changed at some point in the future to provide for the contrary, it is quite possible that the Supreme Court would not hesitate to use its supervisory powers to void such a rule in the federal system.

The second aspect of *Chandler* which is important concerns the procedures used by Florida in allowing cameras to broadcast criminal proceedings. It is apparent upon careful examination that the Florida system was designed to ensure criminal defendants the maximum amount of protection available.³⁴ First of all, the decision of whether and under what circumstances cameras will be permitted is left at all times to the discretion of the trial judge.³⁵ Secondly, there are numerous restrictions placed upon telecasting procedures once the decision to allow cameras in the courtroom has been made: only one camera and technician are allowed; the telecasting team must use the court's existing recording systems; there can be no artificial lighting; equipment cannot be moved during the trial, nor can lenses be changed; no conversations between lawyers, parties and their counsel, or bench conversations may be recorded; and the judge may exclude coverage of certain witnesses or phases of the trial at his discretion.³⁶ In this manner Florida has attempted to deal with many of the aspects which opponents of televised criminal trials find objectionable.³⁷

A third aspect of the decision which serves to restrict its future application concerns the effect that televising a criminal trial has on the participants.³⁸ Petitioners had argued that the presence of television cameras was, at least in criminal trials, inherently prejudicial to defendants in that it caused jurors to suppress their personal beliefs and instead conform to generally accepted ideas.³⁹ The effect of television on jurors, as well as on others present in the courtroom, has been the subject of vigorous debate.⁴⁰ The Supreme Court, however, stated that there was insufficient data to

³³ *Supra* note 29 and accompanying text.

³⁴ Indeed, petitioners here did not argue that they were in fact actually prejudiced. As can be seen upon a reading of their brief, appellant's main argument centered around the idea that the procedure was inherently prejudicial. Brief of Appellants at 25.

³⁵ *Supra* note 11.

³⁶ 101 S. Ct. at 805.

³⁷ *Id.* at 811.

³⁸ For a recent Ohio statistical survey evaluating the effect of televised trials, see Day, *The Case Against Cameras in the Courtroom*, 20 Judges J. 18 (1981).

³⁹ Brief for Appellants at 28.

⁴⁰ See Joint *Amicus* Briefs of the Attorneys General of 17 states (including Ohio) and the Conference of Chief Justices, which supported the Florida program. Opposing the Florida program were the American Bar Association, American College of Trial Lawyers, and numerous public defender agencies. 101 S. Ct. at 810, nn. 9 & 10.

support the argument that the mere presence of cameras had a negative psychological impact on jurors or any other participants in the trial.⁴¹ Another factor relevant to this determination was the finding that technological advances since the date of the *Estes* trial in 1962, have made the presence of television in the courtroom less physically objectionable.

A fourth factor which is important to note concerns the ability of a criminal defendant to show that the media coverage of his trial has in some way prejudiced his case. The Court recognized that a showing of prejudice may be made in regard to a judge or a trial participant,⁴² but did not enumerate what factors were relevant to such a showing. However, the majority did say that juror prejudice may be shown by offering proof that "the presence of cameras impaired the ability of the jurors to decide the case on only the evidence before them."⁴³ In light of the fact that the *Estes* decision is explicitly not overruled, it is also possible that a criminal defendant may wish to show that coverage of his trial has been "sensational"⁴⁴ or that coverage should not be permitted at all because his trial is a "notorious"⁴⁵ one.

CONCLUSION

While *Chandler* does permit the telecasting of criminal trials despite the objection of the defendant, one must be careful in evaluating what the Court has actually said. Viewed in its narrowest terms, the decision merely recognized the ability of state courts to determine for themselves whether telecasting of criminal trials is a worthwhile proposition. Further, any system which does not provide the same minimum procedural protections for defendants as those found in the Florida program could be subject to challenge. Also, defendants can always attempt to show actual prejudice or

⁴¹ *Id.* at 812.

⁴² *Id.* at 813.

⁴³ *Id.*

⁴⁴ The term "sensational" was used by the Supreme Court to describe the type of media coverage which surrounded the proceedings against Dr. Sam Sheppard. *Sheppard v. Maxwell*, 384 U.S. 333, 356 (1965). The Court in *Sheppard* held that media coverage of that type amounted to a deprivation of due process of law despite a lack of a showing of actual prejudice. The Court also indicated what steps should have been taken to protect the defendant's due process rights. *Id.* at 358-62. It should be noted, however, that *Sheppard* did not discuss televising criminal trials.

⁴⁵ "Notorious" was the adjective used by Justice Harlan in *Estes* when he characterized the nature of the proceedings against the defendant.

My conclusion is that there is no constitutional requirement that television be allowed in the courtroom, and, at least as to a notorious criminal trial such as this one, the considerations against allowing television in the courtroom so far outweigh the countervailing factors advanced in its support as to require a holding that what was done in this case infringed the fundamental right to a fair trial assured by the Due Process Clause of the Fourteenth Amendment.

381 U.S. at 587 (Harlan, J. concurring).

present empirical evidence to prove that the televising of criminal trials is, in fact, inherently prejudicial. It is thus clear that while the Supreme Court has left the courtroom door open to television cameras in state court proceedings, a change in any one of a number of circumstances could abruptly shut that door.

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