

# CHANDLER V. FLORIDA: MEDIA IN THE COURTROOM WITHIN THE PURVIEW OF THE 14TH AMENDMENT

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**ABSTRACT:** *The Fourteenth Amendment of the Constitution guarantees that no person can be deprived of life, liberty, or property without due process of law. A fair trial is an implicit tenet in the guarantee of due process and must be retained through courtroom decorum, trial actor impartiality, and fulfillment of the public requirement expressed in the Sixth Amendment. The advent of courtroom television broadcasting compromised the due process of defendants by displaying them in a negative light and subject to biased treatment by the actors in a trial. In *Estes v. Texas*, the landmark predecessor to *Chandler v. Florida*, the Court declared that the practice of televising courtroom proceedings was unconstitutional via the potential due process infringements that were inherent in television coverage at the time, including negative bias displayed toward the defendant compromising the impartiality of the trial actors and the various technical distractions accompanying the broadcast teams. The issue of televised court proceedings returned to the Supreme Court with *Chandler v. Florida* and was reevaluated under new considerations. In deciding *Chandler v. Florida*, the Court determines televised trial and pretrial coverage is a legitimate state interest and shifts the burden of proof to the accused, which must evince a violation of his or her due process.*

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Television has become an increasingly prominent medium for entertainment and communication in the lives of Americans. It has allowed the public to view individuals and events from New York and Los Angeles in the comfort of their own living rooms. The power the media has garnered through the ability to influence and to mold public opinion is immense. For example, the manner in which a public figure is presented may generate enthrallment or scorn. The evolution of television and the press has infiltrated almost all aspects of public life, including the courtroom. Within the confines of the courtroom, the power of the media to shape the image of an actor within a trial may threaten the integrity of the trial and the character of the American justice system. In *Estes v. Texas*, 381 U.S. 532 (1965) and *Chandler v. Florida*, 449 U.S. 560 (1981), the Supreme Court adjudicated that when media coverage compromises the defendant's right to a fair trial, it must be prohibited or restricted. By the enumeration of the Fourteenth Amendment, the Sixth Amendment, and the concept of federalism expressed in the Tenth Amendment, the Court's decision to adhere to the guidelines of *Estes v. Texas* in deciding *Chandler v. Florida* to protect the states' interest in televised trial coverage is undeniably correct.

Billie Sol Estes was indicted in a Texas county grand jury for swindling. His case received a significant amount of pretrial coverage, and as a result, Estes presented a motion of closure to remove all visual media coverage from the courtroom. The hearing for his motion was televised, and the movement of cameras

into and about the courtroom was cumbersome.<sup>2</sup> In 1965, television broadcasting technology was in its infancy and the cameras' large, bright lights pervaded the courtroom, while wires ran throughout it.<sup>3</sup> In addition to the visual broadcasting equipment consuming the courtroom, audio equipment overwhelmed the judges and parties via microphones on the tables in addition to excessive technician activity. The pretrial broadcasting activity "led to considerable disruption of the hearings."<sup>4</sup> The environment within the courtroom was disrupted by the blustering movement of the broadcast teams. Excessive pretrial coverage, not only in substance but in scope (as the trial received national notoriety), created a considerable burden on the trial proceedings and the individuals involved in the trial.

Estes contended that the broadcasting of portions of his pretrial coverage infringed upon his right of due process under the Fourteenth Amendment. The Fourteenth Amendment reads, "... nor shall any state deprive any person of life, liberty, or property, without due process of law."<sup>5</sup> Video cameras, wires, and bright lights violate due process by creating a distracting environment inside the courtroom that adversely affects the impartiality of actors involved in the trial, and pretrial coverage may have prejudicial impact upon jurors and the public. The Sixth Amendment guarantees an impartial jury to the accused; some of its clauses are

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2 Estes v. Texas, 381 U.S. 532 (1965)

3 Shelly Rosenfeld, *Will Cameras in the Courtroom Lead to More Law and Order? A Case for Broadcast Access to Judicial Proceedings*, 6 AMERICAN UNIVERSITY CRIMINAL LAW BRIEF 12, 14 (2010).

4 381 U.S. at 532.

5 U.S. Const. amend. XIV. § 1.

incorporated into the Fourteenth Amendment due to their inherent effect on the administration of justice. It states, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.”<sup>6</sup>

The aforementioned clause of the Sixth Amendment is incorporated into the Fourteenth due to its necessity in guaranteeing a free trial. The intention of the Founding Fathers in drafting the Sixth Amendment was to eradicate the possibility of secret tribunals, which would create the opportunity for government oppression within the setting of a closed courtroom. Justice Black describes the causes for repressing the possibility of secret tribunals and the necessity of upholding the Sixth Amendment to preserve the integrity of fair trials in *In Re Oliver*, 333 U.S. 257 (1948). He states:

The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy’s abuse of the *lettre de cachet*. . . Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution.

The right to a public trial is inherent in the common law tradition, since the public presence ensures accountability on behalf of trial

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6 U.S. Const. amend. VI.

actors, including judges, witnesses, and jurors.

The Court has recognized that the public rightfully may observe what occurs at a trial, and the court has no legitimate authority to “suppress, edit, or censor events, which transpire in proceedings before it.”<sup>77</sup> Members of news stations and other media providers are no different than the general public, insofar as they do not violate the accused’s right to a fair trial. The public may receive printed news of trial activities that they would have observed had they attended the trial, given that no erroneous information is printed that would affect the impartiality of further proceedings.<sup>8</sup>

However, the media’s access to a trial is not limitless and certain restrictions are conferred upon the press where the defendant’s due process is in jeopardy. The Court concluded in *Nixon v. Warner Communications*, 435 U.S. 589 (1978), that the guarantee of a public trial “confers no special benefit on the press. Nor does the Sixth Amendment require that the trial- nor any part of it- be broadcast live or on tape to the public. The requirement of a public trial is satisfied by the opportunity of members of the public and the press to attend the trial and report what they have observed.”<sup>79</sup> While the Court recognizes the right of the media to attend a trial as members of the public, it also limits the media’s role within the confines of the courtroom. Such restrictions become particularly

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7 Craig v. Harney, 331 U.S. 367, 367 (1947).

8 J.R. Wiggins, *Should Canon 35 Be Amended? A Newspaper Man Speaks for the News Media*, AMERICAN BAR ASSOCIATION JOURNAL, 839 (1956).

9 Chandler v. Florida, 449 U.S. 560 (1981).

pertinent when television broadcasting is involved, since factors arise that may threaten the fairness of a trial that would otherwise be nonexistent with standard journalism.

Newspaper and television coverage are dissimilar mediums for transmitting trial proceedings. A newspaper journalist may bring a pen and pencil into a courtroom, record the proceedings, and go wholly unnoticed by the defendant, jury, witnesses, and judge. A team of television broadcasters is incapable of stealth or secrecy in recording the events and may present psychological distractions to the actors of the trial. The footage and commentary surrounding the coverage may adversely influence trial actors' dispositions against the defendant. Such psychological distractions and prejudicial impact would carry an exterior influence into the trial that presents a sizable impact on the decision, violating the defendant's guarantee to a fair trial. As Justice Holmes noted half a century earlier, "The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print."<sup>10</sup>

The Court in *Estes* concluded the presence of televised broadcasting violates the right of the accused to a fair trial and therefore must be prohibited. The Court promulgated that the potential of obstruction of justice by media, and therefore due process infringement, was enough for the prohibition of media in the courtroom. Speaking for the Court in *In Re Murchison*, 349 U.S. 133 (1955), Justice Black stated:

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10 *Patterson v. Colorado*, 205 U.S. 246 (1907).

A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness... To perform its function in the best way, 'justice must satisfy the appearance of justice.'

The Court founded the ruling that potential prejudice was sufficient to prohibit media trial coverage via precedents in *Rideau v. Louisiana*, 373 U.S. 732 (1963) and *Turner v. Louisiana*, 379 U.S. 472 (1965). In *Rideau* and *Turner*, the Court adjudicates that the potential of impingement of the defendant's right to due process compromises the concept of a fair trial, and measures created by the states that further this premise of injustice are inherently unconstitutional. *Rideau* and *Turner* were also precedents for *Sheppard v. Maxwell*, 384 U.S. 333 (1966), a case with similar media infringements as in *Estes*, where the pretrial coverage was so expansive and disparaging toward Sheppard that a fair trial was impossible to attain.<sup>11</sup> The result of *Sheppard* was the same as *Estes*, as the coverage in *Sheppard* was sufficiently misleading and led to a favorable outcome for the appellant. The decisions in *Estes* and *Sheppard* place the burden of proof chiefly on the state, since the defendant must not even attempt to prove that the presence of media is a distraction to the actors of the trial.

Justice Clark outlines four major obstructions of a fair trial derived from the presence of television broadcasting that vio-

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11 Gerhard Casper & Philip Kurland, 63 *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law*, 13,17 (1966).

late a defendant's due process and therefore render state action via broadcast media coverage unconstitutional. The first of these obstructions is the psychological impact of the television on jurors. As a case gains national or notorious attention, the jurors might hear the facts of the case prior to summoning and enter the trial with predispositions about the defendant.<sup>12</sup> Four of the jurors selected to hear *Estes* admitted to following all or segments of the pretrial coverage in the news prior to jury selection. The influence from public opinion, particularly on juries who are not sequestered during a trial, creates a considerable weight on the minds of the individuals deciding the outcome of the case. The decision may become less evidence based and increasingly built upon individual predilections. By entering a trial with a predisposition for or against a defendant forged by televised recordings, the juror's impartiality is compromised and the trial assumes a fundamentally unfair nature. This biased nature violates the defendant's right to due process of law ascribed by the Fourteenth Amendment.

Second, witnesses may also become reluctant to appear before a television. They may "view and hear the testimony of the preceding witnesses, and so shape their testimony as to make its impact crucial."<sup>13</sup> The ability of witnesses to observe the trial proceedings prior to testifying endangers the "solemn decorum"<sup>14</sup> of the court procedure and may have significant and drastic influences on the outcome of a case.

Third, the effect on trial judges is also crucial, particu-

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12 381 U.S. at 532.

13 381 U.S. at 532.

14 *Id.*

larly where the judge presides over a district that elects its judicial officials. In broadcasting the trial, public opinion will be forged into sympathy or contempt toward a defendant. For a judge, this situation creates a paradox between fairly deciding the case on the premise of law or treatment of a case as a political incentive. By deciding contrary to public opinion, a case with enough attention and notoriety may cause a judge's electorate to effervesce with disfavor. When the judge is not elected, he or she still must preside over the maintenance of the broadcasting crews, creating an unnecessary and burdensome distraction within the courtroom.<sup>15</sup>

Lastly, the presence of television broadcasting affects the accused by depicting the defendant in an unpopular context.<sup>16</sup> The trial broadcast will reach a multitude of viewers, each of whom will pass judgment on the defendant based upon what they have seen. In the instance of notorious or national interest cases (as almost all televised cases are), the defendant usually will be depicted in negative light, which violates the impartiality afforded in due process. Televising the pretrial also alters the attorney-client relationship, since the personal business of an attorney and the defendant is compromised through press recordings and televised broadcasts.

A decade and a half later, *Chandler v. Florida* reached the Supreme Court to challenge the precedent set in *Estes v. Texas*. The opportunity was presented when the State of Florida amended 32 F.S.A. Judicial Conduct Canon 3A(7), which stated, "A

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15 *Id.*

16 *Id.*

judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto.”<sup>17</sup> The canon was amended to read: “Electronic media and still photography coverage of public, judicial proceedings in the appellate and trial courts of this state shall be allowed.”<sup>18</sup> The canon contradicted the decision reached in *Estes* and allowed a perceived violation of due process of law.

Many changes had occurred since the time of the *Estes* decision in 1965, including new justices to the Supreme Court and advancements in television technology. The Nixon appointees, including Warren Burger to Chief Justice, Henry Blackmun, Lewis Powell, and William Rehnquist, were intentionally chosen as constitutionally minded conservatives.<sup>19</sup> The television was also evolving rapidly, which made the words of John Marshall Harlan’s concurrence in *Estes* appear prophetic. He concluded,

. . . we should not be deterred from making the constitutional judgment which this case demands by the prospect that the day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process. If and when that day arrives the constitutional judgment called for now would of course be subject to re-examination in accordance with the traditional

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17 Gerhard Casper and Philip Kurland, 121 *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law*, 65 (1982).

18 *Id.* at 66.

19 TINSLEY YARBROUGH, *THE BURGER COURT: JUSTICE, RULINGS, AND LEGACY 76-98* (ABC-CLIO, 2000).

workings of the Due Process Clause.<sup>20</sup>

The new era ushered in a sense of states' rights and advancements in television and broadcasting technology, which would play a pivotal role in the decision of *Chandler v. Florida*.

The facts of the case will briefly be discussed, as they are not essential to the key holding in *Chandler v. Florida*. Two Miami policemen were charged with conspiracy to commit burglary, grand larceny, and possession of burglary tools when they broke in and entered into a prominent Miami Beach Restaurant.<sup>21</sup> Due to local attention, the state chose to enact canon 3A(7) for the case. The defendants claimed that they were being treated with bias and that the statute violated their right to a fair trial under due process but reported no specific distractions caused by the presence of television cameras.

The setting of the courtroom in *Chandler* was noticeably different than that of *Estes*. The “twelve camera men jostling for position” were replaced with one television camera, and only one camera technician was permitted in the courtroom.<sup>22</sup> When multiple news stations desired to broadcast the trial, they were required to pool resources and gather the coveted media from the same source. The camera was required to remain in a fixed position in a remote area of the courtroom. Film, lenses, and videotape equipment could not be changed once the trial commenced. Restrictions on audio use also applied to Florida courtroom decorum.

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20 381 U.S. at 532.

21 *Chandler v. Florida*, 449 U.S. 560 (1981)

22 *Id.*

Broadcasting crews were permitted to use only existing recording systems for audio pick-up, and the audio they gathered could not include conferences between lawyers, attorneys, respective parties, or bench conversations.

The Court initiated by denying that *Estes v. Texas* ruled televised court proceedings unconstitutional outright. The appellants insisted *Estes* asserted a general rule claiming the presence of television broadcasting warrants a proscription of media coverage within the courtroom, claiming, “The mere presence of television and still photographic cameras during a criminal trial is inherently prejudicial and denies the accused his right to a fair and impartial trial.”<sup>23</sup> The Court, and specifically Burger, differs in that opinion, as he claims that the prejudice against the defendant exists within the prejudicial impact of the coverage, and is not inherent in the practice of coverage itself.<sup>24</sup> The distinction between the mere presence of the coverage and the prejudicial impact, occurring through the manner by which the coverage was enacted, renders the *Estes* decision as constitutional “per se.”<sup>25</sup> The impingement of due process was only observed in *Estes* due to the facts of the case and is not a general preclusion against states to attempt legislation that would institute courtroom coverage by television or photography.

The appellants rely on Justice Clark’s plurality opinion from *Estes*, which stated that the potential prejudice was enough

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23 Gerhard Casper and Philip Kurland, 121 *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law*, 73 (1982).

24 *Id.*

25 *Id.*

to rule media coverage in the courtroom unconstitutional. Chief Justice Burger, however, relies on Harlan's aforementioned concurrence in the decision. Harlan stated, "Forbidding this innovation [television coverage in the courtroom], however, would doubtless impinge upon one of the valued attributes of our federalism by preventing the states from pursuing a novel course of procedural experimentation" (*Estes v. Texas*, 381 U.S. 532 (1965)). The concept of federalism was a point completely overshadowed in *Estes v. Texas*. The Court plants the burden of proof squarely upon the state; in *Chandler*, the burden of proof is reversed to the appellant, observing and respecting a state interest.

The states have long been encouraged to create alternative judicial means to adjust to the changes occurring in society, whether they are social, economic, or technological.<sup>26</sup> The Constitution provides no enumerated instructions regarding the media in the courtroom, nor is it explicitly proscribed in the due process clause (or anywhere else for that matter). Given the explicit language of the Tenth Amendment, which reads "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,"<sup>27</sup> the legislation provided in canon 3A(7) is rightfully rendered constitutional. The Court has adjudicated that the states should take an experimental role in legislation, promulgating in *Addington v. Texas*, 441 U.S. 418 (1979): "The essence of federalism is that states must be free to develop a variety of solutions to

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26 *Id.* at 475.

27 U.S. Const. amend. X.

problems and not be forced into a common uniform mold.”

Justice Brandeis may have contributed the most famous encomium for federalism in his dissent in *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932). Brandeis asserted:

To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy instances of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

The experimentation with media trial coverage is precisely the type of “novel social and economic experiment” that Brandeis was referring to in his dissent. Television technology had evolved rapidly since a decision pertinent to media trial coverage was rendered, and the best way to test whether due process was still violated by the presence of broadcasting in a courtroom would be through state legislation. The states also adopted safeguards to ensure that a defendant’s due process was not violated, which will be explored shortly.

The Court has expressed that state sovereignty can only be rendered unconstitutional when a statute enacted to promote the public good “*has no real or substantial relation* to those objects, or is beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution” [empha-

sis added] (*Jacobson v. Massachusetts*, 197 U.S. 11 (1905)). The desire of the state to use television and photography inside the court room assuredly furthers a state interest. The public interest in community events and happenings is fundamental in a citizen's civic duty. The general safety of the community is also within the purview of the state police powers, and by broadcasting the trial of perpetrators the public may see that the general safety is being upheld.

Justice Burger proceeds to review whether the appellants demonstrated true infringement of their due process. He states, "A defendant has the right to review to show that the media's coverage of his case... compromised the ability of the jury to judge him fairly." He continues by claiming, "A defendant might show that broadcast coverage of his particular case had an adverse impact on the trial participants sufficient to constitute a denial of due process. Neither showing was made in this case."<sup>28</sup> The Court has clearly shifted the burden of proof from the appellee to the appellant to display a violation of due process and furthers the notion that *Estes* did not preclude the states' right to protect important interests and social experiments.

The Court observed the safeguards implemented in amending Canon 3A(7) to avoid the adverse risk to the defendant found in *Estes*. The trial court first advises jurors not to watch the local news on television; instead, they are urged to view the national news.<sup>29</sup> The courtroom distractions presented by televi-

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28 *Chandler v. Florida*, 449 U.S. 560 (1981).

29 *Id.*

sion broadcasts are significantly minimalized, and the trial court judge may edit or expel the broadcast procedures where due process violations are observable. The state also takes precautions to shelter witnesses of note or vulnerability (such as minors, sex crime victims, and generally timid witnesses) from viewing or appearing in broadcasts of the trial or pretrial.<sup>30</sup>

Through the safeguards that Florida proposes in Canon 3A(7), the state guarantees the defendant due process. The Court carefully differentiates between risk of violation of due process and the actual, determinable breach of the constitutional guarantee. By ensuring diversion of jury attention away from the news, protection of witnesses from media coverage, and restricted media access at the control of the trial judge, *Chandler* minimalizes the threat to due process that televised trial procedures potentially present and gives way to fruitful state experimentation.

The appellants in *Chandler* insist that the presence of cameras and media inside the courtroom alone provides a psychological distraction that will inevitably affect their participation and lead to a violation of due process. Burger and the court contend that lacking a convincing body of empirical data and research, the assertion that media presence alone adversely affects trial actors psychologically is without merit and cannot be upheld. Burger claims, “At present, no one has been able to present empirical data sufficient to establish that the mere presence of the broadcast media inherently has an adverse effect on that process.”<sup>31</sup> With-

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30 *Id.*

31 *Chandler v. Florida*, 449 U.S. 560 (1981).

out suggesting a specific offense relatable to media coverage condemning the court of violating due process, the appellants fail to prove that media presence alone violates their right.

The Court's decision in *Chandler v. Florida* remains within the judicial context of *Estes v. Texas*. As in *Estes*, the Court adjudicates in *Chandler* that the presence of media broadcasting a trial may violate due process insofar as the broadcast adversely affects the actors in the trial to perform impartially. The decision satisfies the Sixth Amendment guarantee of an impartial jury, the Fourteenth Amendment right of due process of law, and the right of the public to be informed in community events. The *Chandler* decision's most prominent facets is the deference to state autonomy in experimental legislature, exemplified by Canon 3A(7) of Florida judicial code, and the burden of proof requiring the accused to demonstrate due process impingement. While *Estes* focuses on the defendant's rights and does not recognize a state interest, *Chandler* adheres to the Nation's federalist tradition and upholds the statute as a means of experimentation within the state's role as a laboratory. The decision meets all constitutional requirements, including the fundamental concept of federalism omitted in *Estes*, and is undisputedly correct.

