

## The Jury Room Is No Place for TV

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Seventy-five years ago, physicist Werner Heisenberg postulated the uncertainty, or indeterminacy, principle: It is impossible to measure simultaneously the velocity and position of a subatomic particle, because measuring the velocity moves the particle in unpredictable ways. A social corollary of Heisenberg's principle is that observing the behavior of people who know they are being observed changes their behavior. Which is one reason why televising juries' deliberations is a terrible idea.

But armies on the march are no match for a terrible idea whose time has come. And a flamboyant Texas judge (he has sentenced convicts to wear signs proclaiming their offenses, and ordered two wife-beaters to apologize on a public street) has granted the request of public television's "Frontline" to televise jury deliberations in the trial of a 17-year-old accused of killing a man during a carjacking. Capital punishment is possible. The tape will be held by the judge until the trial ends. The defendant has agreed to all this, but the prosecutor is appealing the judge's ruling.

A few jury deliberations in criminal trials in Arizona and Wisconsin have been televised, but never in a capital case. Some televised jurors have said they quickly became oblivious to the cameras. However, it is highly implausible that this would be true of most jurors, or of any in trials that attract intense public interest.

In fact, the Texas case already proves that televising juries shrinks the pool of potential jurors: Fourteen of the first 110 prospective jurors in the Texas case asked to be excused rather than be conscripted into high-stakes public theater. And televising juries' work will skew jury selection and performance in other ways. Televising proceedings may make some persons eager to be jurors -- but what kind of deliberators will *they* be? And shy, reticent or inarticulate jurors might be paralyzed by cameras that turn a private civic duty, akin to voting, into a public performance.

After trials, jurors are free to talk about their deliberations. But televising the deliberations robs jurors of an important part of the right of free speech -- the right not to speak publicly.

Juries are supposed to be independent of the government prosecuting, of the defendant -- and of the community, with its passions and prejudices. Juries, unlike legislatures, are not representative institutions. They do apply the community's settled values, as codified in law, but must not reflect a community aroused by particular instances of crime and

punishment. Televising House and Senate floor activities (for the first seven years after the Constitution was ratified, the Senate met behind closed doors) is not comparable because it involves coverage of elected representatives, and of activities long observable from spectator and press galleries.

Because, as a wit said, imitation is the sincerest form of television, perhaps the campaign for televising juries owes something to the rise of "reality" television. (Which is unreal. See above, the social corollary of Heisenberg's principle.) And because public television is not an agenda-free zone, perhaps "Frontline" hopes its jury tapes will be ammunition for opponents of capital punishment. In any case, "Frontline" will edit the jury tapes for its program, thereby greatly diminishing the tape's educative value. And the request by "Frontline" for exclusive rights to the tape undercuts the contention that jury deliberations should be open to all journalists as public events.

Journalism's insatiable appetite for access to government processes is understandable, but an appetite is not its own justification. And the Texas judge's justification for televising the jury is a crashing non sequitur: He says America's judicial system is excellent and "we shouldn't be ashamed of how it works." As though shame is the only reason for privacy.

In the sweltering Philadelphia summer of 1787, the Constitutional Convention closed the doors and even the windows of Independence Hall so that statesmanship and compromise could flourish without concern for an audience of factions. Televising the Federal Reserve Board's decision-making would cause the decision-makers to adopt a stifling reticence to prevent market gyrations. If Supreme Court conferences were televised, they would become meaningless: The justices would do their serious conferring and compromising in another room, just as most of Congress's serious business occurs where cameras are absent.

In a society saturated by entertainment values, "the public's right to know" can be an excuse for voyeurism tarted up as a journalistic imperative. However, the public's fundamental right is to good government, and the function of juries is to produce justice, not entertaining journalism.