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Trial by Television

Herald Price Fahringer '56 reviews the lessons of the O.J. Simpson trial

It was a moment that united the American people in drama. Demand for electric power surged as millions of television sets were switched on. The number of long-

distance telephone calls fell by 60 percent, the largest drop in AT&T's history. One hundred and fifty million people hovered around the TV or the radio — nine out of 10 American adults.

When the gavel dropped on the O.J. Simpson verdict that historic afternoon, Oct. 3, 1995, more people were watching than saw any Super Bowl, or even Neil Armstrong's first steps on the moon.

Such, said attorney Herald Price Fahringer '56, is the power of television to capture the public's imagination.

Fahringer spoke about the continuing controversy over cameras in the

courtroom — a debate brought to its extremes in the Simpson trial — at the 1996 Alumni Luncheon in New York City. The Jan. 26 luncheon at New York's Union League Club was hosted by the UB Law Alumni Association. Vice Dean Alan S. Carrel and Assistant Dean Ilene R. Fleischmann represented the Law School.

Fahringer, a partner in the New York law office of Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, knows the problem of courtroom celebrity only too well. A leading constitutional lawyer and defense attorney, he has taken 14 cases to the U.S. Supreme Court. His clients have included Claus von Bulow, accused of trying to kill his socialite wife; Jean Harris, killer of the Scarsdale Diet doctor; and jazz drummer Buddy Rich, on drug charges. In addition, Fahringer appeared on air as a legal commentator for CNN and "Inside Edition" during the O.J. Simpson trial — a taste of the media business that has given him special insight into the tension between a fair trial and a free press.

He is known for his strong defense of First Amendment freedoms, but it was his concerns about televised trials that Fahringer mainly addressed in his talk.

The issue is important, he said, because New York State's experiment with cameras in the courtroom is scheduled to end in January 1997. New Yorkers must decide whether to allow such coverage permanently —



Left to right: Nancy C. Caple '81, Anna Maria Cellino '81 and Larry P. Malfitano '81



Phillip Brothman '62 and John F. Canale '47



“When you have a third eye in the courtroom and when you have an enormous audience out there, people become celebrities.”

Herald Price Fahringer '56

or ban it altogether.

“Strong voices are needed on both sides of this controversy,” Fahringer said, “and I think we should all participate in it.”

At the heart of the problem, he said, is “the realization that the principal virtues of our judicial system, detachment and objectivity, are imperiled by an inordinate amount of publicity, particularly adverse or prejudicial publicity. ... I think cameras in the courtroom present special hazards to our system that we must understand, that we must appreciate if a rational resolution of this issue is to be reached.”

Specifically, he noted television’s power to change human behavior. “The power of the image over the power of the word is enormous,” Fahringer said. He noted that on average, American adults watch television for just over seven hours a day — more time than they spend working, when weekends and holidays are taken into account. By comparison, only about half of Americans read a daily newspaper.

The “celebrity factor,” Fahringer said, is the most disconcerting aspect of allowing television coverage of trials. He cited an instance when Simpson judge Lance Ito called the attorneys into his chambers during the trial to show them, with glee, a “Dancing Itos” clip from “The Tonight Show.”

“When you have a third eye in the courtroom and when you have an enormous audience out there, people become celebrities,” Fahringer said.

“It is not just the judge — everyone involved with the case has his 15 minutes of fame, for good or ill. The witnesses do: Who could forget Kato Kaelin on the stand, as if auditioning for his next acting role? The attorneys do: Who heard of Barry Shek before this? The commentators do: Hundreds of lawyers all over the country commented on the trial, both for the prose-

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cution and defense. That would not happen if every minute of the trial weren't televised."

And all the so-called "experts" find their day in the sun as well. "Do we," asked Fahringer, "really need Marcia Clark's hairdresser on a cable network explaining why they changed her hairdo so it gave her a softer appearance? Do we need an expert on Akita dogs to explain that, well, a dog wailing like that might have lost an owner?"

The word "circus" has been applied more than once to the media frenzy surrounding the Simpson trial,



Herald Price Fahringer '56 and Maria I. Doti '88

me, we cannot abide."

Fahringer noted that 47 states have authorized some form of televised trials; England, Scotland, Ireland, Canada and Australia are experimenting with it. On the other hand, he said, the Federal Judiciary Conference has rejected the idea. In California, which has allowed televised trials for 11 years, Gov. Pete Wilson has proposed banning them once again.

New York's moment of decision on the issue is near, and Fahringer urged those present to give the matter serious attention. "The value of television in the courtrooms is self-evident," he said. "The public is entitled to know about our shortcomings, about the delays, about the sidebars, about the poorly managed trials, about the bickering among lawyers. We need that kind of public exposure for the correction that we hope will come.

"But we have a duty and a responsibility to protect the system from anything that might undermine its integrity, its reliability, or anything that might undermine the fact-finding process. And if cameras in the courtroom jeopardize that, then we have to speak out against them." ■



Joseph Ted Donovan '80 and Vice Dean Alan S. Carrel '67

and Fahringer embraced the analogy.

"It is almost as if you visualize the main trial, the courtroom, as the main tent where maybe things are proceeding somewhat normally, but around the tent is developing a sideshow of talk shows, press conferences, witnesses being interviewed, and jurors who are going on the Larry King show. It is the sideshow around the main courtroom that is generated and is promoted by the cameras in the courtroom in the main tent.

"It is not news anymore. It is entertainment. When we treat trials as shows, it cheapens the system. The risk is that cameras in the courtroom can turn the law into vaudeville. When that happens, the public is going to distrust the whole system. And that, it seems to



Left to right: Michael J. Rosen '94, Maria I. Doti '88, Jay Lippman '87, Forrest Strauss '88 and Ginger Schroder '90