

DAILY NEWS

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November 12, 2015

VIA EMAIL

John W. McConnell, Esq.
Counsel
Office of Court Administration
25 Beaver St., 11th Floor
New York, NY 10004

Re: Proposed Amendment of 22 NYCRR Parts 29 and 131: Electronic Recording and Audio-Visual Coverage of Court Proceedings

Dear Mr. McConnell:

I write on behalf of Daily News, L.P., publisher of the *New York Daily News*, NYP Holdings, Inc., publisher of the *New York Post*, and The New York Times Company, publisher of *The New York Times*, in response to the proposed amendments to 22 NYCRR Parts 29 and 131. News coverage of the New York courts is a vital part of what we do, and we support the Office of Court Administration's initiative to modernize these rules. OCA's willingness to amend the rules to facilitate more comprehensive audio-visual and still photographic coverage to the fullest extent permitted under the law reflects what we in the news business understand well: modern consumers of news expect, and deserve, to see and hear the events of the day, not merely read about them. Accordingly, we strongly endorse the proposed revisions as modified by the separate comments submitted on November 6, 2015 by the New York City Bar Association ("City Bar") through its Communications & Media Law Committee.

In addition to endorsing the changes as a whole, we wish to stress several points.

First, we believe that the proposed revisions removing still photography from the definition of audio-visual coverage are critically important and long overdue. Section 52 of the New York Civil Rights Law on its face does not apply to still photography, as numerous courts have recognized. The current rules unfairly and unnecessarily subject still photography to restrictions not contemplated or required by the Legislature, and the proposed revisions properly make clear that still photography belongs in a separate category.

Second, we particularly appreciate the removal of the prohibition on still and audio-visual coverage of arraignments, and we further support the City Bar's proposal to remove the blanket

prohibition on coverage of suppression hearings. There is no reason to treat either arraignments or suppression hearings differently than any other types of proceedings. Just as with other proceedings, judges should have the discretion to allow or not allow coverage based on the particular circumstances of each individual case in light of the factors enumerated in the Rules.

Third, we fully endorse the OCA's effort to permit audio-visual coverage to the maximum extent permitted by §52 as interpreted by the courts. As our publications have transformed from solely print outlets to multimedia platforms, our ability to cover the courts with videography and sound recordings contributes directly and powerfully to the public's understanding of the courts' important work and the myriad cases that pass through New York's courthouses. Increased audio-visual coverage is particularly appropriate given that modern reporting often makes use of unobtrusive devices like smartphones and miniature cameras, eliminating the concerns about the disruptive presence of equipment that motivated parts of the current rules.

Finally, while we believe that amendment of these Parts is a significant step in the right direction, we remain convinced that it is time for the Legislature to fundamentally amend Civil Rights Law § 52 to broadly permit audio-visual coverage of the courts. We urge OCA to place reform of § 52 on its legislative agenda. New York's prior experiment with expanded audio-visual coverage was a success and generated almost no complaints or complications. The New York State Bar Association and the New York City Bar Association have both in the past recommended greatly expanded audio-visual coverage, and Chief Judge Lippman has called for greater audio-visual coverage of court proceedings. Indeed, the vast majority of states allow the kind of coverage that New York now bars, and there is little evidence that sensitive deployment of audio-visual equipment in more proceedings would have any negative effect on fair trial rights. New York is long overdue for reform.

Respectfully submitted,



Matthew A. Leish

cc: David E. McCraw, Esq. (The New York Times Company)
Genie Gavenchak, Esq. (NYP Holdings, Inc.)



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Via Email

November 13, 2015

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New York, NY 10004

**Re: Proposed Amendment of 22 NYCRR Parts 29 and 131: Electronic Recording
and Audio-Visual Coverage of Court Proceedings**

Dear Mr. McConnell,

The National Press Photographers Association (“NPPA”) respectfully submits these comments on behalf of the organizations listed below in response to the proposed amendments referenced above.

In keeping with our longstanding support of audio-visual and still photographic coverage of judicial proceedings to the greatest extent allowed by law, we strongly endorse the comments of the Communications & Media Law Committee of the Association of the Bar of New York City as well as the position of the New York State Bar Association¹ regarding the Office of Court Administration (“OCA”) proposals to revise and update the Unified Court System (“UCS”) rules. In particular, we support the proposed revisions to the definition of audio-visual coverage and other proposed clarifications excluding still photography from the definition of audio-visual coverage.

We whole-heartedly agree with the proposed goals of “(i) consistently maintaining the distinction between audio-visual coverage and still photography throughout the rules and using consistent terminology to avoid confusion; (ii) emphasizing that there should be a presumption in favor of permitting both audio-visual and still photographic coverage to the extent consistent with Section 52 of the Civil Rights Law, with ultimate decisions left to the presiding judges; and (iii) eliminating certain restrictions on coverage created or continued by the proposed revisions that go beyond the requirements of Section 52.”²

¹ See: New York State Bar Association, Special Committee on Cameras in the Courtroom, Final Report to House of Delegates, March 31, 2001 <http://tinyurl.com/nt8owg5>

² Letter of Charles S. Sims, Chair, Communications & Media Law Committee of the Association of the Bar of New York City

In 2013, New York State Chief Judge Jonathan Lippman announced “a legislative proposal to expand camera coverage of courtroom proceedings” in his State of the Judiciary address. Under his proposal, “all court proceedings — including the testimony of witnesses at hearings and trial — will be open to cameras at the discretion of the judge presiding over the case.”³

We urge the OCA to exercise its authority to ensure that New York’s court system, which has been a beacon of progressive policies for the nation, does not fall further behind than it already has under some of the anachronistic rules promulgated at a time when televisions used vacuum tubes and at best could receive 12 channels, broadcast in black & white for a few hours a day.

As Justice Oliver Wendell Holmes once stated, “it is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.”⁴

Beginning in 1987 and continuing through 1997, the New York State legislature passed a series of legislative enactments permitting audio-visual coverage of New York trials on an experimental basis. During this period, four studies by distinguished experts were conducted to judge the effect of such coverage on the rights of defendants to a fair trial, as well as the educational value to the general public from such coverage. The studies were extremely thorough, taking into account thousands of evaluations submitted by trial judges and attorneys throughout the state, complaints from members of bar associations, studies and experiences from other jurisdictions, multiple public hearings at which nearly 100 witnesses testified, and written submissions from other interested parties.⁵

The studies specifically refuted virtually all of the arguments that have been raised against permitting audio-visual coverage of court proceedings. For example, in response to the argument that the “bright lights, large cameras and other noisy equipment” intrude upon the court proceedings and create an “atmosphere unsuited to calm deliberation and impartial decision making,”⁶ the studies instead found that improvements in technology had “rendered cameras no more, and possibly less, conspicuous than the newspaper reporter with pencil and notebook and the courtroom artist with crayon and sketch pad.”⁷

Responding to criticisms that electronic media coverage would sensationalize court proceedings, subsequent studies found that while “it is simply not true that the media have sought to cover only ‘sensational’ proceedings . . . , [c]overage of those cases reveals the reality

³ See: New York State Unified Court System, *State of the Judiciary 2013*, Jonathan Lippman Chief Judge of The State of New York, March 5, 2013 at 19. <http://tinyurl.com/nzwjoto>

⁴ Vol. 3 OLIVER W. HOLMES, *The Path of the Law*, in *Collected works of Justice Holmes* 391, 399

⁵ See: Hon. Burton Roberts et al., *Report of the Committee on Audio-Visual Coverage of Court Proceedings* at 20–21(1994).

⁶ Act of June 15, 1987, ch. 113, § 1, 1987 N.Y. Laws 231 (McKinney).

⁷ See: Roberts Report, *supra* note 5, at vii.

of the courtroom as distinctly as does the coverage of other cases.”⁸ The studies also suggested that the behavior of trial participants may well be more likely to “improve rather than worsen in the presence of cameras.”⁹ In short, concerns expressed by some critics that coverage might lead courtroom actors to change their behavior, either by grandstanding or politicizing their comments, are not supported by the experience of the New York courts. Nor is the charge that the presence of cameras in courtrooms will intimidate witnesses and jurors. The data studied in the Feerick Report, for instance, noted that:

- (i) “[M]any judges believe that witnesses’ testimony is unchanged in the presence of cameras.”¹⁰
- (ii) “[W]itness intimidation is neither borne out by the record in New York nor sufficiently strong to warrant barring cameras from the courtroom across-the-board. Such witness concerns are adequately addressed, in our view, by all of the current safeguards in Section 218 and in the implementing rules.”¹¹
- (iii) Claims that jurors will watch and be influenced by televised coverage of their case or that jurors will be reluctant to reach an unpopular decision given their knowledge that the public is watching are unsupported. In any event, judges are “capable of taking these factors into account when they consider whether to grant or deny an application for camera coverage in a particular case.”¹²
- (iv) “[M]ost judges felt that compared to similar cases covered only by the print media, lawyers made about the same number of motions, objections and arguments in camera-covered cases and presented about the same amount of evidence and witnesses.”¹³
- (v) “[W]e have no basis from our review to conclude that lawyers in camera-covered cases in New York State have failed to serve their clients and the public responsibly. The evidence from the record before this Committee is that they have met their professional obligations.”¹⁴

⁸ See: John D. Feerick et al., Report of the Committee to Review Audio-Visual Coverage of Court Proceedings, *reprinted in An Open Courtroom: Cameras in New York Courts* 70, 89 (Fordham Univ. Press 1997) [hereinafter “Feerick Report”].

⁹ *Id.* at 80.

¹⁰ *Id.* at 77.

¹¹ *Id.* at 78.

¹² *Id.* at 76–77.

¹³ *Id.* at 79.

¹⁴ *Id.*

- (vi) “There was ample testimony and public comment that cameras raised some judges’ performance and had a positive impact on judicial demeanor.”¹⁵
- (vii) “In the end, we are left with a record heavily weighted with opinions which suggest that judicial conduct may improve rather than worsen in the presence of cameras. There is no basis in this record to conclude that judges will not faithfully discharge their responsibilities if courtrooms are open to cameras. The evidence before this Committee is that they have met their obligations with a high degree of competence.”¹⁶

The Feerick Report went on to find that audio-visual coverage “respects the public value of openness, the public nature of a trial, and the constitutional principle of a fair trial,”¹⁷ and that any negative consequences could be adequately addressed by appropriate statutory restrictions. Notably, all four of the studies concerning the effect of cameras on New York courts concluded that audio-visual coverage of courtroom proceedings should be permanently implemented.¹⁸

Although some opponents of media coverage of courtroom proceedings continue their relentless conjecture that such reporting may interfere with the right to a fair trial or cause some other irreparable harm, empirical studies of such objections and the over 40 years of experience with such coverage in almost all other states have proved those concerns to be chimerical at best.

There is no substantive rational or legal argument for precluding cameras from the courtroom. Their presence in the courtroom and the images that they convey provide a compelling public service without infringing upon the constitutional or statutory rights of any affected persons or institutions. Respect for the dignity, decorum and safety of the courthouse is not only maintained but enriched by allowing such coverage. Any proposed rules should continue to provide judges with the judicial discretion necessary to permit such access while safeguarding those rights and principles.

Permitting still photography and audio visual coverage of courtroom proceedings enhances public understanding of, and confidence in, the judicial system without interfering with the fair administration of justice. The watchful eye of the public will demand increased accountability from all courtroom participants. Claims of sensationalistic or inaccurate reporting will be readily verifiable by a public able to view the underlying proceedings for itself. That see-

¹⁵ *Id.*

¹⁶ *Id.* at 80.

¹⁷ *Id.* at xxi.

¹⁸ Despite the recommendation of all four studies to permit audio-visual coverage of trial proceedings, the State legislature failed to permanently adopt Section 218 of the Judiciary Law, which served as the statutory underpinning of the four New York experiments. The dispute centered chiefly around a proffered amendment to Section 218 — one not proposed by the studies — to permit any witness, including parties, to veto all coverage of their own testimony.

it-for-yourself capability is even more important today in an age of Twitter, Facebook and text messaging.¹⁹

The Internet has further enabled gavel-to-gavel audio-visual coverage of courtroom proceedings because of its inherent capacity to permit unlimited streaming of the trial rather than be bound by the time constraints of traditional broadcast and cable media. Additionally, newspaper websites have made it possible for the print media to also provide audio-visual coverage where they previously were relegated to only publishing still images and written words. Websites carrying news and information have the capacity to convey and archive video of full trial proceedings. A growing trend by many communities to have all-news cable television stations that focus around the clock on local events also would permit extended coverage of trials – not just short news clips with sound bites.

“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.” Those words written 50 years ago by U.S. Supreme Court Justice John Harlan in *Estes v. Texas* (first case in 1965 considering cameras in the courtroom) are now self-evident. Modern technology has transcended the difficulties that led to bans on such coverage. The courtroom trial has been a fixture of justice and fairness throughout our state’s history. That tradition will only be enhanced by permitting still photography along with audio-visual coverage in New York State courtrooms.

Justice Potter Stewart, dissenting in *Estes* wrote, “The idea of imposing upon any medium of communications the burden of justifying its presence is contrary to where I had always thought the presumption must lie in the area of First Amendment freedoms.” Society can ill afford to let the arbitrary and speculative objections of some antagonistic to press coverage infringe upon the public’s right to observe proceedings in our courts by lens-capping the very means by which modern society receives the news.

Those opposing the proposed changes miss the point. The tired arguments that camera coverage will: prejudice a defendant’s fair trial rights, their right of privacy, the prosecution’s ability to have witnesses comply with subpoenas, as well as the detrimental effect cameras will have on lawyers, judges, and other participants are just that – threadbare and unsubstantiated. But the more crucial point is not how cameras affect either side in a litigation. It is whether cameras will increase the public’s confidence in our justice system. Nothing is more fundamental to our democratic system of governance than the right of the people to know how their government is functioning on their behalf. That, we submit, is a higher value which should drive the debate here; and is the central point about which the Bar Association, the Unified Court System and, indeed, the legislature should be concerned.

¹⁹ Perhaps the best example of the advantages of cameras-in-the-courts came in the Florida sexual assault trial of William Kennedy Smith. Had the trial not been televised, the public surely would have believed that his acquittal was due to Kennedy money and influence. Because it was televised, the public understood that he was acquitted for a different reason: it was clear the prosecution had not proved its case.

We are confident that our state's judicial system will benefit from increased still photography and audio visual coverage. It is not the sensational surprises of *Law and Order* or (for earlier generations) of *LA Law* or *Perry Mason*; it is a plodding, unspectacular but thorough process by responsible, well-meaning lawyers and jurists which should give the public confidence. But if the public can't see this for themselves, it is not surprising that they lack trust in the system. In *Richmond Newspapers*, Chief Justice Burger observed that "people in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."²⁰ Only if they can see it first-hand, which these ever evolving new technologies now allow at virtually no cost, will the public gain – as they should – added confidence in our legal system. And that, ultimately, is the most important value we can provide.

We respectfully submit these comments in support of the proposed revisions in order to further ensure fairness in our justice system and restore New York as the national leader for the public's right of access to court proceedings. It is also our hope that the success of these progressive rules will spur needed and timely legislative change as well. We urge the OCA to institute its proposed revisions without delay, along with the additional changes set forth in the comments submitted by the Communications & Media Law Committee of the Association of the Bar of New York City.

Thank you for your attention and consideration in this matter.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

On behalf of:

Associated Press Media Editors
Associated Press Photo Managers
The Deadline Club/New York City Chapter of the Society of Professional Journalists
Media Law Resource Center
New York News Publishers Association
New York Press Photographers Association
New York State Broadcasters Association, Inc.
The NewsGuild of New York Local 31003, CWA
North Jersey Media Group
Online News Association
Radio Television Digital News Association
Reporters Committee for Freedom of the Press
Scripps Media, Inc., d/b/a WKBW-TV
Society of Professional Journalists

²⁰ *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 565 (1980).

**NEW YORK
CITY BAR**

**COMMITTEE ON COMMUNICATIONS
& MEDIA LAW**

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November 6, 2015

VIA ELECTRONIC DELIVERY

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**Re: Proposed Amendment of 22 NYCRR Parts 29 and 131:
Electronic Recording and Audio-Visual Coverage of Court
Proceedings**

Dear Mr. McConnell,

The New York City Bar Association (“City Bar”), by its Communications & Media Law Committee (the “Committee”), respectfully submits these comments in response to the proposed amendments referenced above.

In keeping with the longstanding commitment of both the Committee and the City Bar to supporting audio-visual and still photographic coverage of judicial proceedings to the greatest extent allowed by law, the Committee strongly endorses this effort to revise and update the rules. In particular, the Committee favors the proposed revisions to the definition of audio-visual coverage and other proposed changes designed to make clear that still photography does not fall within the definition of audio-visual coverage.

The Committee supports all of the proposed changes, with the few limited exceptions outlined below. In the ever-changing modern technological landscape, we believe that the proposed revisions will help ensure that one of our most basic rights as a democratic society - free public access to courtrooms - remains adequately protected. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 557 (1980); *Associated Press v. Bell*, 70 N.Y.2d 32 (1987).

In addition to offering our support for the proposed revisions overall, we have a number of proposals with respect to a few specific areas where we believe there is room for improvement, which we respectfully offer for your consideration. Our proposals are aimed at further refining and improving the proposed revisions to better accomplish the following goals: (i) consistently maintaining the distinction between audio-visual coverage and still photography

throughout the rules and using consistent terminology to avoid confusion; (ii) emphasizing that there should be a presumption in favor of permitting both audio-visual and still photographic coverage to the extent consistent with Section 52 of the Civil Rights Law, with ultimate decisions left to the presiding judges; and (iii) eliminating certain restrictions on coverage created or continued by the proposed revisions that go beyond the requirements of Section 52.

Our proposed changes are as follows (section numbers refer to the renumbered sections as contained in the proposed amendments):

Section 29.1

29.1(a):

Change: “Taking photographs, films or videotapes, or audiotaping, broadcasting or telecasting in a courthouse including any courtroom...is forbidden...”

To read:

“Audio-visual coverage and still photography in a courthouse including any courtroom... are forbidden...”

This proposal is aimed at consistently maintaining the distinction between audio-visual coverage and still photography and using consistent terminology throughout. The rules will be simpler, clearer and easier to apply if they consistently treat still photography as a distinct category and use “audio-visual coverage” to refer to other types of recording or streaming.

Section 29.2

Change to read: “In respect to appellate courts, the Chief Judge hereby authorizes audio-visual coverage and still photography of proceedings in such courts...”

This proposal helps maintain the distinction between still photography and other types of coverage and consistent terminology throughout the rules, as discussed above.

Section 131.1

131.1(a):

Change to read: “In order to maintain the broadest scope of public access to the courts... to facilitate the audio-visual and still photographic coverage....”

This proposal helps maintain the distinction between still photography and other types of coverage and consistent terminology throughout the rules, as discussed above.

131.1(b):

Change to read: “Audio-visual coverage of proceedings involving testimony is restricted to the extent set forth in Civil Rights Law § 52, as interpreted by the courts.”

This proposal recognizes that courts have interpreted and in some cases imposed limiting constructions to Civil Rights Law § 52. We believe our proposed language would ensure that the revised rules comply with the requirements of the statute without running afoul of this body of case law.

131.1(c):

Delete this provision.

Section 131.1(c), as formulated in the proposed revisions, appears to extend the prohibition on audio-visual coverage beyond what the text of Civil Rights Law § 52 requires. Our suggested deletion is in keeping with the stated goal of the revisions, to promote coverage to the fullest extent permitted by law.

Section 131.2

131.2(b):

Change to read: “‘Audio-visual coverage’ or ‘coverage’ shall mean the electronic broadcasting or other transmission to the public from the courtroom, or the recording of sound or light in the courtroom for later transmission or reproduction, or the taking of motion pictures in the courtroom by news media. It shall not refer to the taking of still pictures.”

While we strongly endorse the OCA’s proposed revision of this paragraph deleting the word “still” from the definition of audio-visual coverage, the OCA’s proposed new language stating that the definition shall include still pictures “to the extent required by law” is unnecessary and potentially confusing since we are not aware of any law that requires the definition of “audio-visual coverage” to include still photographs. Instead, we propose making absolutely clear that the term “audio-visual coverage” does not include still photography.

Section 131.3

131.3 Heading

Revise the heading of this section to read: “Section 131.3 Application for audio-visual or still photographic coverage.”

This proposal is necessary given that the term “audio-visual coverage” no longer includes still photography.

131.3(a):

Change to read: “Audio-visual coverage and still photography of judicial proceedings shall be permitted only upon order of the presiding trial judge approving an oral or written application made by a representative of the news media for permission to conduct such coverage.”

This proposal is aimed at consistently maintaining the distinction between audio-visual coverage and still photography and using consistent terminology throughout, as described above.

[PROPOSED] Section 131.3(b):

Add the following proposed Section 13.1.3(b): “In a court’s review of an application for audio-visual or still photographic coverage, the court should employ a presumption that the application will be granted unless denial is required by law or clearly warranted by the factors identified in this section.”

This proposed addition would help to realize the stated purpose of these revisions, to provide the fullest scope of public access to the courts permitted by law. A presumption in favor of coverage, with courts still free to use their discretion to deny applications, strikes the appropriate balance between the public’s longstanding right to access and other considerations.

Section 131.7

131.7(e):

Change to read: “Unless permitted by specific order of the court following a request by the victim, no coverage shall be permitted of the victim....”

The OCA’s proposed revision would actually increase restrictions on coverage beyond the current rules by barring coverage even where the victim requests coverage. The Committee’s proposal will continue to protect victims by maintaining an absolute prohibition on coverage without both the victim’s and the court’s consent while granting greater leeway to courts to further the goal of public access by allowing victims who choose to go public to do so.

131.7(h):

Delete this section.

The Committee wholeheartedly endorses the proposed change removing the prohibition on coverage of arraignments from this section. We propose going further by deleting the remainder of the section, which prohibits coverage of suppression hearings without the consent of all parties. Generally speaking, these rules leave the ultimate decision about whether to permit coverage to the discretion of the presiding judges, who are in the best position to evaluate all of the relevant factors with respect to a particular case. The Committee believes that there is no reason to strip courts of that discretion when it comes to suppression hearings. As with other types of proceedings, allowing the trial judge to conduct a reasoned evaluation of the

circumstances of each case with respect to suppression hearings would serve the twin goals of preventing prejudice and facilitating the broadest public access to the courts that is permitted by law, about subjects as significant as police misconduct.

In closing, we would like to reiterate the Committee's enthusiastic support for the proposed revisions as a whole. Given the importance of maintaining the public's right of access and the speed of technological developments in recent years, these changes are vitally needed. While further reform will be necessary in the form of legislative action, the proposed revisions to the rules are a significant step forward that can and should be taken in the near term. We urge the OCA to institute the proposed revisions, along with the additional changes set forth above, without delay.

Respectfully,

A handwritten signature in black ink, appearing to read "Charles S. Sims". The signature is written in a cursive, flowing style.

Charles S. Sims
Chair
Communications & Media Law Committee



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August 10, 2015

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25 Beaver Street
New York, New York 10004

Re: Proposed rules regarding audio-visual recording and broadcasting of court proceedings

Dear Mr. McConnell:

The following comments are submitted in regard to the proposed changes to the Judicial Rules of the Unified Court System at 22 NYCRR Parts 29 and 131 as set forth in your Memorandum of June 11, 2015.

There are procedural and substantive aspects to these proposals that must be addressed.

First and foremost, the audio-visual recording and media broadcast of judicial proceedings is prohibited by New York Civil Rights Law § 52 as interpreted and upheld by the New York Court of Appeals in *Courtroom Television Network LLC v State of New York et al*, 5 N.Y.3d 222 (2005). In accordance with the law as determined by the Court of Appeals, allowing the audio-visual recording and media broadcast of courtroom proceedings requires legislative action and cannot be accomplished by court rule. Likewise, audio-visual recording and media broadcast of courtroom proceedings cannot legitimately be accomplished by the "amendment" of court rules which were promulgated under the authority of expired law.

With regard to the substance of the new proposals, they fail to provide needed safeguards to protect the individuals involved in the proceedings as well as the integrity of the justice system. Finally, permitting the audio-visual broadcast coverage of trial proceedings, especially criminal proceedings, is an exceedingly dangerous concept and the prohibition of § 52 must be maintained.

Introduction

Through the years the New York State Defenders Association [NYSDA] has monitored and scrutinized all of these issues and actively engaged in the debate related to the intrusion of cameras in court.

In addressing the current proposals, there are erroneous underlying assumptions in counsel's cover memo of June 11, 2015 regarding the stated need and authority for the new rules.

Decision to Permit Cameras in Court is a Legislative Prerogative Not Subject to the Court's Rulemaking Power.

In *Courtroom Television Network LLC v State of New York et al*, 5 N.Y.3d 222 (2005) [herein after *Court TV*], the Court of Appeals made it unequivocally clear that any adjustment to the existing law related to cameras in court lies squarely with the legislature. The Court further underscored that Part 131 was a direct outgrowth of the now expired Judiciary Law § 218. As such the Court recognized it was not *sua sponte* empowered to create a right via a rule where none exists:

In New York State, the decision whether or not to permit cameras in the courtroom is a legislative prerogative. The Legislature may and has, under our State Constitution, experimented with rules regarding audiovisual broadcasts of trial proceedings. Beginning in 1987 with the enactment of Judiciary Law § 218, the Legislature has on four occasions temporarily permitted certain courtroom broadcasts. Specifically, Judiciary Law § 218 [1] permitted the Chief Judge of the State to "authorize an experimental program in which presiding trial judges, in their discretion, may permit audio-visual coverage of civil and criminal court proceedings, including trials" subject to certain conditions and restrictions.⁶

[FOOTNOTE 6 When Judiciary Law § 218 was in effect, the court system itself exercised control over the means of access to proceedings made available to broadcast media under Rules of the Chief Administrator of the Courts (22 NYCRR) 131.]

... After each experiment, lasting approximately two to three years, the Legislature reviewed the findings and reports on audiovisual equipment in the courtroom, all of which recommended cameras in the courtroom, and, after each review, rejected the recommendation. On June 30, 1997, the Legislature and Governor allowed Judiciary Law § 218 to sunset. *Thus, the ban on televised trials contained in Civil Rights Law § 52 resumed as of July 1, 1997, a ban which continues to the present. ****

We will not circumscribe the authority constitutionally delegated to the Legislature to determine whether audiovisual coverage of courtroom proceedings is in the best interest of the citizens of this state. "A state constitutional rule expanding the rights of the media in New

York to include the right to photograph and broadcast court proceedings would derail what is, and always has been, a legislative process.” (Citations omitted) (Emphases added) *Court TV v NY* at 233-234.

By virtue of the Court of Appeals’ own considered ruling, changing court rules that have no existing statutory authority to permit something otherwise prohibited by law is inappropriate.

Administrative agencies can only promulgate rules to further the implementation of the law as it exists; they have no authority to create a rule out of harmony with the statute. Moreover, an administrative body may not disregard definitions made by legislative bodies under the guise of “interpreting” regulations it is empowered to administer. “The plain language of the legislative enactment is controlling, and the administrative agency may not make a unilateral ruling that is at variance with the legislative enactment” (Internal citations omitted) *Matter of N.Y. City Pedicab Owners’ Ass’n v. New York City Dep’t...*, 61 A.D.3d 558 (AD1 2009).

See also Major v. Waverly & Ogden, Inc., 7 N.Y.2d 332 (1960) [“The rules of an administrative body or even the ordinances of a municipality lack the force and effect of a substantive legislative enactment. ... A constitutional statute, once passed, cannot be changed or varied according to the whim or caprice of any officer, board or individual. It remains fixed until repealed or amended by the Legislature.” (Internal citations omitted)]

Proposals Not Authorized as “Amendments” or New Promulgations

The proposed “amendments” are not authorized because the statutory authority for the Parts no longer exists. *C.f. Aerolineas Argentinas v. United States*, 77 F.3d 1564, 1575, 1996 U.S. App. LEXIS 3326, 26-27 (Fed. Cir. 1996) [When a statute has been repealed, the regulations based on that statute automatically lose their vitality. Regulations do not maintain an independent life, defeating the statutory change.]

Counsel’s cover memo asserts that the need for the new rules arises from the fact that the rules currently on the books have not been amended since the 1990’s, when the Legislature temporarily permitted broad use of cameras in New York courts. However, because the old rules existed solely for the purpose of enabling the now-expired legislation they cannot be legitimately amended.

The Court of Appeals itself has acknowledged the staleness of the rules. In the *Court TV* decision at Footnote 6, above, the Court noted that the rules under Part 131 were specifically promulgated to enable the courts to control the implementation of Judiciary Law § 218. By logical extension, upon expiration of the authorizing statute, to the extent that they enabled the electronic coverage of judicial proceedings, the rules became a nullity by operation of law.

A careful look at the history of the Parts reveals they are inextricably bound with former Judiciary Law § 218 and as such are not subject to amendment without concomitant authorizing legislation.

The Original Rules Relating to the Electronic Coverage of Court Proceedings

The current Part 29, relating to the Electronic Recording and Audio-visual Coverage of Court Proceedings, was first promulgated in 1982. Through the years this Part has been amended twice: 1987 [repealing and adding section 29.3] and 1996 [amending § 29.1 subs.(a) and (b), and eliminating (c)].

With regard to § 29.3, in its original form in 1982, it was a completely different section than appears today. Its original provisions were conditioned on the Legislature acting to repeal or amend Civil Rights § 52 lifting the ban on the electronic coverage of court proceedings.¹ The 29.3 that remains on the books today was enacted in 1987 in connection with, and as authorized by, the enactment of Judiciary Law § 218.

Prior to the enactment of the statute, Judiciary Law § 218, and the corresponding Part 131 of the court rules, Part 29 as enacted encompassed a general ban on any photographing or audio recording in any courtroom under any circumstances without permission of the Chief Administrative Judge, Chief Administrator or a designee thereof. Before any permission could be granted, certain restrictions applied, including that there would be no detracting from the dignity or decorum of the courtroom or courthouse; that there would be no compromise of the safety of any persons having business in the courtroom or courthouse; that there would be no disruption of court proceedings; and that there would be no undue burden on court resources.

Permission for electronic recording or audio-visual coverage was further restricted in the 1982 rule follows:

Permission shall not be granted for the taking of photographs, audio recording or video recording of proceedings in any trial court *unless and until* section 29.3 of this part becomes effective.

Section 29.1(b) in its original form provided that in criminal matters, law enforcement and court personnel should not prevent the photographing of defendants in public places outside the courtroom, and that such photographing or televising should neither be encouraged or discouraged as long as the defendant was not posed.

¹ The original Section 29.3 set forth rules and procedures to be applied for a one year experimental period if Civil Rights Law section 52 were ever repealed or amended to lift the ban of television coverage as pertained to courts. Section 29.3 in its original form never became effective because § 52 was not repealed or amended to lift the ban prior to the 1987 experimental legislation. Interestingly, Section 29.3 in its original form was substantially the same as Judiciary Law § 218 when it was finally enacted in 1987.

Finally, Section 29.1(c) provided that the Chief Judge of the Court of Appeals and the presiding Justices of the Appellate Division or administrative judges may formulate and effectuate reasonable rules relating to any applications under this part.

The Rules under the Experiment as Authorized by Judiciary Law § 218

In 1987, the legislature passed Judiciary Law § 218, and for the first time entertained a modification of the general bar to the photographing or televising of court proceedings mandated by Civil Rights Law § 52. This statute provided for a two year experiment along much the same lines as the Courts had suggested in 1982 in the original 29.3.

As a result of the enactment of Judiciary Law § 218, the Judiciary Rules were amended to accommodate the new statute. On December 1, 1987, the same date § 218 went into effect, the current § 29.3 and the current Part 131 relating to the procedures for applications to broadcast trial court proceedings went into effect.

The Preamble to new Part 131 stated:

Pursuant to the Authority vested in me by section 218 of the Judiciary Law, and after consultation with the Administrative Board of the Courts, I hereby adopt effective December 1, 1987, Part 131 of the Rules of the Chief Administrator of the Courts (22 NYCRR Part 131) relating to the audio visual coverage of judicial proceedings,...
(Emphasis added) 22 NYCRR 131 Preamble.

Based on this history, it is plain to see that Rule 29.3 and Part 131 as they remain in the books are inextricably bound to Judiciary Law § 218, and the expiration of the controlling statute necessarily resulted in the nullification of the implementing rules. The mere fact that § 29.3 may still be read on the books does not operate to revive the expired statute or the corresponding rules.

Permitting Audio-Visual Coverage of Court Proceedings is Neither a Public Access nor a Free Press Issue

Counsel's cover memo suggests that the new rules are founded in a need to "address UCS policy of encouraging open access to court proceedings" and that the old rules "fail to set forth with clarity the statutory prohibition against broadcasting witnesses." Both of these assertions engage erroneous interpretations of controlling law.

With regard to employing the broadcast media as means of "encouraging open access," the federal and New York State law is well-settled that access is not an overarching foundation for audio-visual media coverage of trial proceedings. The United States Supreme Court and the New York Court of Appeals have consistently held that there is no federal or state constitutional right of the press to gain audio-visual access to

courtroom proceedings. Nor is there a right of the public to demand audio-visual broadcast of courtroom proceedings.

While recognizing that the press possess a right to attend and observe criminal trials, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579-80 (1980), the United States Supreme Court has made it clear that the right is a qualified one, identical to the right of the public at large, and does not include the right to televise court proceedings. See *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982) (“right of access to criminal trials ... is not absolute.”); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 609, 610 (1978) (“the line is drawn at the courthouse door; and within, a reporter’s constitutional rights are no greater than those of any other member of the public”. . . “Nor does the Sixth Amendment require that the trial -- or any part of it -- be broadcast live or on tape to the public”).

The Court of Appeals reiterated the same position in *Court TV*, that allowing the audio-visual broadcast is not a matter of free press or public access. Accordingly, the Court ruled that unless and until the New York State Legislature acts to change the law, Civil Rights Law § 52 remains the law prohibiting broadcast coverage of proceedings in which the testimony of witnesses is or may be taken.

Statutory Prohibition Not Limited to Witness Testimony

Laudably, the new proposals entirely preclude the audio-visual and broadcast coverage of the testimony of witnesses and parties. However, the underlying premise as reflected in Counsel’s memo suggests that Civil Rights Law § 52 only proscribes the audio-visual recording or broadcasting of compelled witness testimony. This is an overly narrow construction of the prohibition and ignores the plain language of the statute and controlling interpretations of the law.

The prohibition is clear by the pertinent language of the statute:

No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within this state of proceedings, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in this state;... (Emphasis added) NY Civ R Law § 52.

In accordance with controlling New York state case law, this language is to be construed as it is written: cameras are prohibited in any court proceeding where testimony is or could be presented by a subpoenaed or compelled witness. This is all-inclusive.

The Appellate Division has ruled that by interpreting N.Y. Civ. Rights Law § 52 so narrowly as to preclude audiovisual and still photography coverage of criminal proceedings of only subpoenaed witnesses, a trial judge exceeded his authority as he

permitted what the legislature had expressly forbidden. *In re Heckstall v McGrath*, 15 A.D.3d 824 (3d Dept. 2005). Pursuant to *Mountain View Coach Lines, Inc. v. Storms*, 102 AD2d 663, 476 NYS2d 918 (2d Dept. 1984), cited as authority in *Duffy v. Horton Memorial Hospital*, 66 N.Y.2d 473 (1985), this ruling is binding in all trial courts until another Judicial Department or the Court of Appeals decides to the contrary.

Improperly narrow interpretations of § 52 that permit cameras into proceedings based on the de facto absence of witnesses further creates prejudicial situations similar in effect to the prohibited “perp walk.” See *Lauro v. Charles*, 219 F.3d 202 (2d Cir 2000).

The instant proposals gloss over the overall broad statutory restriction in favor of a facile interpretation that only addresses the audio-visual coverage of witnesses.

Authorizing Broadcast Coverage under § 52 “as interpreted by courts”

The current law in New York prohibits the use of any type of audio-visual recording or broadcasting equipment in court proceedings. Civil Rights Law § 52 upheld by *Courtroom Television Network, LLC vs State of New York*, 5 N.Y.3d 222 (2005), reiterating and affirming *In re Santiago v Bristol*, 273 A.D.2d 813 (4th Dept. 2000); *Courtroom Network Television, LLC v State of New York*, 8 A.D.3d 164 (1st Dept. 2004); and *In re Heckstall v McGrath*, 15 A.D.3d 824 (3d Dept. 2005).

Counsel’s memorandum suggests that there are interpretations by New York courts of Civil Rights Law § 52 that may be used to support the audio-visual broadcast coverage of court proceedings. In truth, there are no valid interpretations that would permit what these new proposals would facilitate. Indeed, the entire effort here contravenes the law and attempts to change the law through rulemaking where only legislative action is authorized.

The controlling law in New York as found in Civil Rights Law § 52 prohibits cameras of any kind, including still cameras, in courtroom proceedings except under limited circumstances, none of which include judicial proceedings. The fact that some judges openly disregard these rules does not render such practices as acceptable interpretations of the law as referenced in counsel’s cover memo as “current court practices.”

Several years ago, at a time when the validity of § 52 was being challenged and subject to independent trial court interpretations that would permit cameras in court, some Judges took it upon themselves to independently interpret the Civil Rights Law section in a way that would allow them to bring cameras into their courtrooms. *E.g People v Boss, et al.* In the wake of Judge Teresi’s decision in *Boss*, and pending a final declaration of the constitutionality and construction of the statute, Deputy Chief Administrative Judge Traficanti issued a memorandum to the Administrative Judges around the state offering guidance with regard to the use of cameras in court until the constitutionality of § 52 could be settled. At the time, the memo suggested that the protocols of Part 131 might serve as guidelines. However, the statute was subsequently upheld by the Court of

Appeals in *Court TV* rendering any contravening interpretations of the stature blatantly unlawful and the procedures in Part 131 extraneous.

The state of the law has been clearly set forth by the Court of Appeals in *Court TV*. Audio-visual recording by the media and televised broadcasting are not permitted under the laws of New York unless and until the Legislature acts. To the extent that the current proposals suggest there may be other interpretations that would permit the routine audio-visual recording or broadcasting of courtroom proceedings they are seriously flawed.

Procedural Defects in Instant Proposals

The new rules as proposed fail to include important procedural protections necessary to ensure that due process and fair trial rights are safeguarded. The new proposals delete critical protections embraced by the former rules that, for example, precluded broadcast coverage of arraignments without the consent of the accused. The rules further fail to safeguard young individuals who may be shielded by youthful offender rules that would be rendered meaningless with broadcast coverage of proceedings.

In June 2000, the New York State Bar Association House of Delegates appointed a Special Committee to scrutinize the pertinent issues related to permitting cameras in courtrooms. In March 2001, the House of Delegates adopted the Special Committee's report that favored audio-visual coverage subject to specific restrictions and recommendations designed to insulate the integrity of judicial proceedings from potential commercialization and media profiteering. *See Report of the Special Committee Special Committee on Cameras in the Courtroom, March 31, 2001.*

The instant proposals omit nearly all of the restrictions and recommendations set forth in the report, including:

- a recommendation that any new initiatives include a new two year experimental period with enhanced monitoring;
- a requirement that applications for trial coverage be made no later than 30 days prior to trial so that attorneys are not burdened on the eve of trial;
- a requirement for *de novo* review of a trial court's ruling by the Appellate Division with an automatic stay;
- a requirement that broadcast trials be taped in their entirety for educational purposes and to reduce the likelihood of taping solely for sound bites;
- protections for a defendant to prevent being televised upon a showing of good cause which would include physical harm, damage of reputation, or other seminal factors;
- special protection of victims of Domestic Violence by providing for a presumption against audio-visual coverage;
- presumption against coverage of matrimonial proceedings;
- enumeration of specified factors to be considered in making a decision on whether to permit audio-visual coverage of courtroom proceedings, including consideration

of whether permitting coverage in a particular matter would maintain public trust and confidence in the legal system; whether permitting coverage in a particular matter would promote public access to the judicial system; whether permitting coverage in a particular matter would have an impact on any subsequent proceedings; whether permitting coverage in a particular matter would unfairly influence or distract the jury; whether permitting coverage in a particular matter would impair the ability to select a jury if a mistrial is declared; whether permitting coverage in a particular matter would impair the security or dignity of the court; whether permitting coverage in a particular matter would cause an undue administrative or financial burden to the court or participants; whether permitting coverage in a particular matter would cause potential harm to a patient-provider relationship; whether permitting electronic coverage in a particular matter would have any greater impact than non-electronic coverage.

The disregarded provisions were intended as minimum safeguards to protect courtroom proceedings from the potential dangers that the presence of television cameras may engender.

The Issue is Not Restricted to the State of Audio-Visual Hardware Technology

NYSDA concedes that given the state of film hardware technology today, the question does not turn on the onerous presence of noisy and cumbersome equipment. However, this does not end the inquiry. Indeed, the United States Supreme Court historically, and the Court of Appeals in *Court TV*, have acknowledged that the dangers of permitting televised coverage go well beyond the size of the camera equipment.

In *Estes v. Texas*, the United States Supreme Court considered the constitutionality of allowing cameras in the courtroom for the first time, and held that the circus-like atmosphere created by the television cameras deprived the defendant of due process. 382 U.S. 532, 550-52. In reversing *Estes's* conviction for embezzlement, four of the five justices in the majority opined that televising criminal trials under the technology prevailing at the time constituted a per se violation of the defendant's right to due process. The majority opinion reasoned that "at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." *Id.* at 542-43. Cameras in the courtroom during *Estes's* criminal trial constituted such a per se deprivation.

Importantly, the *Estes* Court's concern was far more global than the mere physical intrusion of the cameras. While recognizing that the circus atmosphere during *Estes's* preliminary hearing had been largely eliminated at the time of trial², the court ultimately reasoned that mere presence of the television media was likely to distract or have conduct-

² "When the case was called for trial on October 22 the scene had been altered. A booth had been constructed at the back of the courtroom which was painted to blend with the permanent structure of the room. It had an aperture to allow the lens of the cameras an unrestricted view of the courtroom. All television cameras and newsreel photographers were restricted to the area of the booth when shooting film or telecasting." *Estes v. Texas*, 381 U.S. 532, 536 (1965).

altering effects on jurors, witnesses, attorneys, and litigants. The Court wrote, “A defendant on trial for a specific crime is entitled to his day in court, not in a stadium, or a city or nationwide arena.” (381 U.S. at 549; cited by *Court TV v NY*, at 230)³.

In *Court TV*, the Court of Appeals also recognized that the issues faced by the legislature in maintaining the prohibition in § 52 go beyond the mere physical presence of the television cameras:

Despite the technological improvements to audiovisual equipment, which renders its presence in courtrooms less obtrusive, the Legislature has not seen fit since 1997 to amend section 52 or reenact section 218. *Court TV, supra*, at 234.

Thus, the proposed new rules that purport to take into account the advances of camera equipment technology do not overcome the more prevalent and disturbing issue of the presence of a commercialized media in what should be dignified, solemn proceedings.

Televised Coverage Does Not Enhance the Integrity of the Justice System or Public Confidence in the Courts.

Although on some level it may seem a compelling argument that televising trials and other courtroom proceedings should give the public a clearer view of the justice system, in reality, the commercialization of judicial proceedings has had the opposite effect. The data indicates that as a result of the manner in which the television industry fragments and sensationalizes the cases it broadcasts, public access, understanding and perception of the judicial system are not enhanced.

Study after study has shown that opening the door to such commercialism of justice not only fails to enhance the public’s understanding of the legal system, but thwarts it. Indeed the lobbying efforts to permit televised broadcast of criminal and other court proceedings are firmly rooted in a vulturine media targeting elected practitioners and officials who rely on media forums for notoriety and that oversells a public service value to overcome the profit motive. See e.g. *Tabloid Justice: Criminal Justice in an Age of Media Frenzy*, 2d Ed., Fox, R.L., Van Sichel, R.W, and Steiger, T.L. (2007 Lynner Rienner Publishers); Noisette, *Minority Report of the Committee on Audio-Visual Coverage of Court Proceedings*, 1997, § III(b); also *Court TV v NY, supra*, at 232, acknowledging that the goal of the media is the “business of disseminating news” thus bestowing it with no special interest in trial attendance beyond its business interest.

³ Reflecting upon this nationwide arena and advances in broadcast technology, in ruling against the presence of cameras in *United States v Moussaoui*, 205 F.R.D. 183, 187 (2002), Judge Leonie Brinkema stated, “Today, it is not so much the small, discrete cameras or microphones in the courtroom that are likely to intimidate witnesses, rather, it is the witness’ knowledge that his or her face or voice may be forever publicly known and available to anyone in the world.” The instant ultra vires rule fails to consider the concerns generated by this new digital world: Facebook, Twitter, YouTube, Instagram, and the very Internet itself, to name but a few.

In 2001, Professors Richard L. Fox of Union College, and Robert W. Van Sickle of Purdue University, Calumet, published their research findings showing that as a result of the media handling of sensational cases like the OJ Simpson trial, and the impeachment proceedings of President Clinton, 44% of citizens polled feel less confident that the court and or the police would treat them fairly. *Tabloid Justice: Criminal Justice in an Age of Media Frenzy*, Fox, R.L. and Van Sickle, R.W. (2001 Lynner Rienner Publishers) [Second Edition published in 2007]

Chief Justice Kaye's Committee to Promote Public Trust and Confidence in the Legal System reached similar conclusions, stating in 1998:

Public perceptions are influenced by entertainment, movies, and TV shows, as well as by news reporting. These portrayals may give only partial coverage of court cases—and usually the most sensational portion—at the expense of the presentation of a more balanced report that would come from covering the entire case, including the results of post-trial applications and appeals. This lack of public understanding often is fueled or exacerbated by media inaccuracies or inflammatory portrayal. Report of Committee to Promote Public Trust and Confidence in the Legal System, May 1999, p. 39.

Research by the Federal Judicial Center in 1994, indicating that so-called gavel-to-gavel coverage of trials results in little more than the use of snippets and sound bites, foretold the Kaye Committee's findings. The Federal Judicial Center concluded that the visual information gained from the use of television cameras was typically used merely to enhance verbal reporting of cases as opposed to adding new and different material to the presentation. The Judicial Center further concluded that the overall coverage did a poor job of providing information to viewers about the legal process. See *Electronic Media Coverage of Federal Civil Proceedings*, the Federal Judicial Center Evaluation (1994).

Analysis of the television broadcast coverage of the trial of *People v Kenneth Boss, et al* regarding the shooting of Amadou Diallo showed that 65% of the broadcast coverage did not show video from inside the courtroom, 79% of the broadcast coverage did not air audio from inside the courtroom, and for every 10 minutes of news coverage, only 2 of those minutes used what was actually said in the courtroom. Pogorzelski, W., Brewer T.W., *Cameras in Court: How Television News Media Use Courtroom Footage*, Judicature, Volume 91, Issue 3 (Nov -Dec) 2007 124-134

Fox and Van Sickle observed in *Tabloid Justice*:

Criminal trials readily lend themselves to *serialization*, or the presentation of news as a series of short dramatic events (involving a small number of recurring characters with specific roles) over an extended period of time. Further, we have noted the *personification* of the presentation of events through a focus on the emotional, personal and human aspects of a story, which are often presented at the expense

of context, background, structure and analysis. This is the manner in which television presents virtually all news, but it is particularly problematic when this style of coverage is used to present images of the judicial process.

In the First Edition of *Tabloid Justice*, Fox and Van Sickel forecast that

We may ultimately end up with a world of legal news in which the agenda is driven not by the presence of important issues or social phenomena but by marketability.

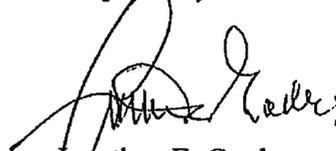
In the 2007 Second Edition, the authors discuss how the United States has transitioned to a sustained era of tabloid-style, entertainment-oriented coverage of legal stories with three important new elements: first, the media focus on legal stories primarily as sources of entertainment, as opposed to opportunities for civic education; second, the frenzy of media activity that envelops a given legal proceeding; third, the tabloid nature of contemporary coverage may actually result in higher levels of public misinformation about the workings of the system and a corresponding drop in the public's faith in American justice. *Tabloid Justice: Criminal Justice in an Age of Media Frenzy*, 2d Ed., Fox, R.L., Van Sickel, R.W, and Steiger, T.L. (2007 Lynner Rienner Publishers.)

Conclusion

The never-ending desire of the media for allowing cameras in court isn't about transparency as much as commercial interest. The American broadcast media turns the critical nature of courtroom business into fodder for entertainment and Reality TV. In some instances, the broadcasting of judicial proceedings incites hate and violence, as was the case in the trial of Jody Arias where defense counsel and experts had their lives threatened by television viewers. See Kiefer, The Arizona Republic <http://archive.desertsun.com/article/20130425/NEWS0802/304250002/Jodi-Arias-death-threat-trial-end>.

The Office of Court Administration rulemaking should not be used to further commercialization of judicial proceedings by indirectly establishing procedures and policy that New York appellate courts have ruled must be done by the Legislature or not at all. These proposed rules may not be legitimately adopted or followed unless and until the New York State legislature enacts new or amended laws regarding the public or media broadcasting of judicial proceedings.

Respectfully submitted,



Jonathan E. Gradess
Executive Director

JEG/dld



New York State Family Court Judges Association

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August 3, 2015

John W. McConnell, Esq.
Counsel
Office Of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

Re: Proposed Amendments of 22 NYCRR Parts 29 and 131

Dear Mr. McConnell:

I write on behalf of the New York State Family Court Judges Association in response to the request for comments on the proposal to amend the Court Rules relating to audio-visual coverage of court proceedings.

Our Association supports the principle of public access to court proceedings to enhance the policy interest in the fair administration of justice, and in that regard supports the facilitation of audio-visual coverage of court proceedings in appropriate cases. Therefore, we also support the efforts indicated in this proposal to modernize the standards and procedures in these rules.

We write in comment to these proposals simply to advocate the importance that any new rules also include and retain significant provisions that safeguard and affirm the discretion of the presiding trial judge to maintain control over his or her courtroom and to determine the broadcast related issues.

Very truly yours,

Sidney Gribetz
President

Supreme Court
of the
State of New York



BARRY SALMAN
JUSTICE OF THE SUPREME COURT

CHAMBERS
851 GRAND CONCOURSE
BRONX, NEW YORK 10451

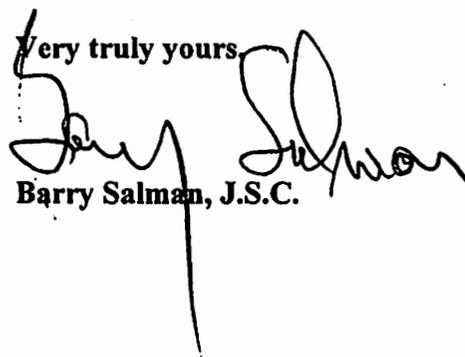
June 25, 2015

John McConnell
Chief Counsel
Office of Court Administration
25 Beaver Street
New York, New York 10004

Re: Cameras in the Court

Dear Counselor:

Enclosed are my comments on resuming the use of live coverage of court proceedings.
I would be available for any further discussion of the subject.

Very truly yours,

Barry Salman, J.S.C.

To the Editor:

The time is ripe to revisit the issue of cameras in the Court in New York. The inner working of our justice system is a subject the public should have more access to and the advancement of technology and increased access to media mediums has given the public the means to be better informed. Potential issues accompany allowing audio visual coverage of Court proceedings and the New York State legislature has been sensitive to such concerns. Over the years, New York has allowed such coverage, but only for limited periods of time and in compliance with the requirements and safe guards of § 218 of the Judiciary Law. The implementation of §218 in conjunction with the Rules from the Chief Judge, with additional legislative actions, should again allow for live coverage of Court proceedings.

The last experimental period for implementing audio visual coverage in New York Courts came to an end on June 30, 1997 and has not been reinstated. Since that time, only occasional audio-visual coverage has taken place.

In 1997 the New York legislature established a committee to review audio-visual coverage of Court proceedings. The comprehensive findings were published in a 1997 report entitled "An Open Court Room." A majority of the committee supported the implementation and a minority opposed. The committee found that cameras in the court will strengthen the public's knowledge to the vital work of the judicial system without interfering with the dignity or decorum of the courtroom.

On several occasions Chief Judge Lippman expressed the view that the debate of this subject should be renewed.

Although there is clearly a great social benefit in allowing audio-visual coverage of courtroom proceedings, the nature and social significance of the specific proceedings being recorded and broadcast and the manner in which trials have been presented to the public has influenced opinions against allowing audio-visual recordings. For example, the coverage and feedback from the trial of the People v. Simpson (California, 1995), demonstrated that such coverage may not be helpful and may actually impede the speed and fairness of that trial.

My personal experience with allowing cameras in the Court was in April, 1996 when I presided over the civil action in Bronx County of Cabey v. Goetz (New York, 1996), which involved a claim for personal injuries arising from a shooting on a New York City subway. This trial received enormous attention and coverage by both local and national media. With the consent of the attorneys and in compliance with Court instruction, the case was covered live on Court TV. For eight days the public had the opportunity to watch live non-fiction trial coverage and view photos of the actual proceedings.

The case of the People v. Zimmerman, (Florida, 2013) a case that involved the shooting of a young man was open to cameras and widely viewed, and was very informative and educational in showing the true nature of courtroom proceedings. For four weeks, network television gave the public gavel to gavel coverage of the trial and it remains the topic of continuous discussion on television and social media. I do not believe that such coverage impeded the administration of justice. In fact, such coverage allowed our populace to witness first hand the administration of justice.

The subject of "Camera in the Court" falls under the Judiciary Law §218, Civil Rights Law §52 and Part 131 of the Rules of the Chief Judge, which set forth criteria for a Judge to consider in deciding whether to allow live coverage. They are as follows: (1) the type of case involved; (2) whether such coverage would cause harm to any participant in the case or otherwise interfere with the fair administration of justice, the advancement of a fair trial or the rights of the parties; (3) whether any order directing the exclusion of witnesses from the courtroom prior to their testimony could be rendered substantially ineffective by allowing audio-visual coverage that could be viewed by such witnesses to the detriment of any party; (4) whether such coverage would interfere with any law enforcement activity; or (5) involve lewd or scandalous matters.

It is of the utmost importance that the public be able to view actual courtroom proceedings as they develop, but only within the rules and guidelines set up for each case to protect the rights of those brought into the Court system. The law clearly instructs the Court to take into consideration the views of the parties, witnesses, jurors and other participants involved in the trial. There is little doubt that the intent of the legislature was for the law to be fair and impartial and to empower the presiding judge with exclusive jurisdiction and discretion as to implementation and control, while setting forth provisions that limit coverage under specific conditions.

Application should be made to the presiding Judge to request permission to conduct audio/video coverage. Given the latitude as to the procedures for implementing § 218 of the Judiciary Law, it is essential that the Judge presiding be the one to control the courtroom and enforce any agreement as to manner of coverage. If any violations take place, the presiding Judge should have the power to admonish, make adjustments or all together prevent the coverage from continuing. I believe that the manner in which a Judge presides and conducts proceedings in the courtroom will allow for proper and orderly presentation of the legal proceedings.

The Rules of the Chief Judge § 131.5 provide that an appeal of a Judge's decision may be made to the Administrative Judge. However, as a former Administrative Judge I believe the present provision of allowing the local Administrative Judge to be the final appeal may give rise to controversy. Clearly, the same interest and/or controversy surrounding the case will be present locally and a decision by a Judge outside the local Court will be accepted easier by all concerned. I recommend that this provision be amended so that either party who disagrees with the presiding Judge's decision should have an immediate appeal to the Presiding Justice of the Appellate Court in the Judicial District. In this way it will be reviewed by an independent Judge outside the court in which it is pending.

With these safeguards set forth by statute and implementation of the Rules of the Chief Judge to insure fairness, objectivity and limitations, I believe the time is right to institute "Cameras in the Court." With constantly advancing technology and the proper controls and restrictions imposed by the Court, it would be advantageous to the citizenry of New York and others to allow for the recording of trials once again.

Barry Salman is a Supreme Court Justice and was Administrative Judge for the Civil Division, 12th District, Bronx (2005 - 2010).

From: Hon. Eric Bjerneby
Sent: Thursday, August 20, 2015 2:46 PM
To: rulecomments
Subject: New rules re cameras in the courtroom

I have not been able to locate the text of the proposed rules but am familiar with the current rules and articles regarding the proposed changes. With over 40 years in this business as a prosecutor, court attorney, and trial judge I am firmly convinced that live recording of the proceedings, audio and video, is usually a bad idea. Absolute discretion should rest with the trial judge.

As we all learned from the OJ trial, this kind of coverage becomes a huge distraction for the attorneys, witnesses, jurors, and sometimes even the judge. The participants are in danger of becoming more focused on their appearance and impression, and performing for a larger audience, than on the matter at hand. It creates the real and likely danger that the proceedings will be reduced to a circus atmosphere with exaggerated posturing and publicity seeking, not to mention the chilling effect on witnesses who, particularly in criminal cases, are rightfully fearful of any consequences which might flow from giving testimony, and who are often present in court only as a result of having been served with court process. In addition, some witnesses are better witnesses than others and may fear being subject to public ridicule and being made the butt of jokes by those who find humor in a witness's embarrassment when confronted by a talented cross-examiner. Leave courtroom "entertainment" for Hollywood.

Any member of the public who wishes to attend a trial is free to do so. He or she is also free to read any accounts written by members of the press or others who have attended and experienced the proceedings. In my view, the dangers of introducing live recording of trial proceedings far outweigh any consideration of the "public's right to know" which can be easily satisfied in numerous other ways as alluded to above.

Accordingly, I do not believe that live coverage should be encouraged. In addition, I believe that if and when any such applications are made the trial judge must be left with absolute discretion, after full review and consultation with those concerned, to decide such applications as he or she sees fit under the circumstances of the case at hand.

Hon. Eric Bjerneby
Nassau County District Court Judge
99 Main Street
Hempstead, New York 11550

From: Judge Michael Gary
Sent: Wednesday, July 8, 2015 10:24 AM
To: rulecomments
Cc: John W. McConnell
Subject: Audio-Visual Coverage

Dear Mr. McConnell:

I was glad to see that there is interest in updating the rules of the Chief Judge and the Chief Administrative Judge addressing audio-visual coverage in the courtroom, which as you note, have not been amended since the 1990's. Along with the rules themselves, I would strongly urge an update to the OCA form that is used when A-V coverage is requested by members of the media. In its current iteration, it is only an application form (www.nycourts.gov/press/audiovisual.pdf).

I would recommend therefore, that you also create a Uniform Order to be used by the trial judge which would indicate whether, for example, the People and/or defense consents to the requests by the media, or whether and how the court might condition the application with space on the form for any restrictions or modifications of the request. Such modifications might include at what point in the proceedings the A-V coverage is allowed or what type of photography (e.g., only a profile photo) is permitted.

Thank you for your attention to this matter.

From: Rogers, Susan (Law) ·
Sent: Wednesday, August 19, 2015 2:08 PM
To: rulecomments
Subject: Proposed Amendment of 22NYCRR Parts 29 and 131

All for the changes as long as the courts can guarantee the safety of persons having business with the court, the safety of court personnel, children , witness and justice is not hampered in any way.

From: Steven C. Mandell
Sent: Thursday, August 20, 2015 3:38 PM
To: rulecomments
Subject: cameras in courtrooms

Gentlemen:

I am generally in favor of permitting cameras in courtrooms to educate and acquaint the unfamiliar public with myriad functions served in our judicial system, with one notable exception. In my view court room cameras should not be permitted during an ongoing jury trial. Indeed, no broadcast of the proceedings, most particularly prior to the entry of judgment should be permitted. Otherwise, prospective witnesses might be encouraged or self-motivated to tailor the testimony to the proceedings which, arguably, can be prevented –at least minimized- by the rule requiring that a non party witness be excluded from the courtroom until he or she actually testifies. Furthermore, there is no assurance that the sitting jurors would not view televised broadcasts of the trial tainted with editorial comments potentially interfering with impartial juror deliberations. There is no similar concern with non jury hearings or appellate proceedings for which I fully endorse permitting cameras in the courtroom.

Respectfully,

Steven C. Mandell

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From: Jo Ann Friia
Sent: Friday, June 19, 2015 1:51 PM
To: Antonio Galvao
Subject: Redaction "new rules" in civil cases and "cameras in the courtroom"

22 NYCRR Part 29 and 131 extending and amending use of audio-visual equipment for coverage of court proceedings

While no Judge really welcomes it, cameras in the courtroom is permitted in New York, and as long as rules give Judges guidelines and a fair degree of discretion to authorize its use, then we have no stated objection to current proposed amendment.

Jo Ann Friia
President, NYSACCJ



DAVID P. MIRANDA
President, New York State Bar Association

Heslin Rothenberg Farley & Mesiti P.C.
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November 12, 2015

John W. McConnell, Esq.
Counsel
New York State Unified Court System
Office of Court Administration
25 Beaver Street
New York, New York 10004

**Re: Request for Comment – Proposed Amendment to 22 NYCRR
Part 29 and 131**

Dear John:

At its meeting on November 6, 2015, our Executive Committee considered the request for comment on the proposed amendments to the court rules governing electronic recording and audio-visual coverage of court proceedings. The Executive Committee decided not to take a position on the specific amendments proposed, and that a prior report of our Association, prepared by a Special Committee on Cameras in the Courtroom in 2001 and approved by our House of Delegates, will be of assistance to the Administrative Board in its evaluation of these proposed amendments. Although there have been significant changes in technology since the issuance of this report, it contains a number of recommendations that remain as relevant today as when the report was first issued. The report is attached.

The report concludes that audio-visual coverage of courtroom proceedings can aid the public in understanding the legal system and the lawyer's role. Public understanding and trust is fundamental to the justice system. In reaching this conclusion, however, the report sets forth a number of recommendations and conditions for audio-visual coverage. These recommendations and conditions are enumerated in the Executive Summary of the report and are further discussed in the body of the report.

We commend the report to you for the consideration of the Administrative Board and would be pleased to provide any additional information you may require or be of other assistance.

Respectfully submitted,

David P. Miranda

NEW YORK STATE BAR ASSOCIATION

**Special Committee on Cameras
in the Courtroom**

**FINAL REPORT TO THE
HOUSE OF DELEGATES**

March 31, 2001

The Special Committee is solely responsible for the contents of this report and the recommendations contained herein. Unless and until adopted in whole or in part by the Executive Committee or House Delegates of the New York State Bar Association, no part of this report should be considered the official position of the Association.

SPECIAL COMMITTEE ON CAMERAS IN THE COURTROOM

A. Vincent Buzard, Esq., Chair, Rochester
Douglas G. O'Brien, Esq., Vice Chair, Mount Vernon

MEMBERS

Stephanie S. Abrutyn, Esq., New York
Martin B. Adelman, Esq., New York
Judith M. Aydelott, Esq., Mount Kisco
Harvey B. Besunder, Esq., Islandia
Hon. John T. Buckley, New York
Rachel Kretser, Esq., Albany NY
Carolyn G. Nussbaum, Esq., Rochester
Beverly M. Poppell, Esq., New York
Leroy Wilson, Jr., Esq., White Plains
Mark C. Zauderer, Esq., New York

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**Brad Carr, Director, Department of Media Services and
Public Affairs**
**Frank J. Ciervo, Associate Director, Department of Media
Services and Public Affairs**

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- B. Bibliography**
- C. Letter sent to Bar Leaders**
- D. List of Persons Interviewed by the Committee**
- E. Questionnaire Used to Conduct Interviews**
- F. Analysis of Statutes of Cameras in the Court Rules**
- G. Section 218 of the Judiciary Law**
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- J. Comments:**
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 - 2. Committee on Children and the Law**
 - 3. Commercial and Federal Litigation Section**

4. Criminal Justice Section
5. Assemblywoman Gloria Davis
6. Hon. John R. Dunne
7. General Practice, Solo and Small Firm Section
8. Health Law Section
9. Committee on Media Law
10. Henry G. Miller, Esq.
11. Monroe County Bar Association
12. New York County Lawyers' Association
13. Hon. Eugene E. Peckham
14. Women's Bar Association of the State of New York
15. Hon. James A. Yates

ACKNOWLEDGMENTS

The New York State Bar Association is indebted to the members of the Special Committee on Cameras in the Courtroom because of their extraordinary commitment of time, thought and energy devoted to the work of the Committee.

The relatively short period of time available, coupled with the complexity of the issue dictated that the members meet regularly in face to face conferences lasting four to six hours, together with regular telephone meetings. The mass of written material we listed in the bibliography required numerous hours to review in preparation for the meetings. In addition, each of the members of the Committee undertook to interview a number of lawyers and judges who had actual experience with cameras in the court. Accomplishing all of its work in a short period of time required personal sacrifice on the part of the members and I am forever indebted to them.

We also owe a great debt to all of the lawyers, judges and journalists who took the time to share with the Committee their fact-based, firsthand views of audio-visual coverage of judicial proceedings, both pro and con, which helped shape this final report and the debate within the Committee that led to our recommendations.

The Committee wishes to thank Ms. Margaret Finerty, Esq., chair of the New York County Lawyers' Association Task Force on Cameras in the Courtroom, for sharing materials that group assembled. We received the utmost cooperation from the following individuals and note their assistance: Philip M. O'Brien, managing editor, WNBC-TV; S. Paul Conti, Jr., news director, WNYT-TV; Chuck Samuels, news director, WOKR-TV; Ron Lombard, news director, WIXT-TV; Douglas P. Jacobs, Esq.; Hon. Charles J. Siragusa; Ira D. London, Esq.; Raymond A. Kelly, Esq.; Hon. Leslie Crocker Snyder; Christy Gibney Carey, Esq., Jean Walsh, Esq., and Hon. Joseph Teresi, Supreme Court, Albany.

I also owe a debt of gratitude to Carolyn Nussbaum who did the detailed analysis of state by state rules and who drafted the section of the report relating to the rules, and to Rachel Kretser who led the discussion and wrote the section on protection for sexual assault victims, domestic violence victims and safeguards for children.

Still others assisted the Committee in innumerable ways. Darryl Towsley, a student at Albany Law School conducted significant research in compiling the rules governing audio-visual coverage of judicial proceedings in the 50 states and the District of Columbia. Jonathan E. Gradess, executive director, New York State Defender's Association, shared with the Committee research materials culled from that organization's files.

Without the logistical support of persons such as, Juli Robinson, and Dahl Cummings, who handled flawlessly all of our meetings arrangements as well as my long suffering paralegal Deb Grotke, Tanny Davenport, and Leslie Dunn, the work of the Committee would have ground to a halt.

I also want to thank the law firm of Nixon Peabody which permitted us to use their

excellent conference facilities and accommodated all of our meeting needs.

Finally, the Committee would like to thank our two staff liaisons who were always up to the challenges presented to them. Brad Carr, director, Department of Media Services & Public Affairs, was always available to me and worked constantly on the project. His wise counsel and help in gathering material were indispensable. I also want to thank Frank J. Ciervo, associate director, Department of Media Services & Public Affairs, who, working with Brad, aided greatly in the effort. They met the task head-on and managed to keep us afloat.

A. Vincent Buzard, Chair

EXECUTIVE SUMMARY

The report of the Special Committee on Cameras in the Courtroom contains the following findings:

-All of the studies provided to the Committee by Bar Associations and other professional groups from other states favor cameras in the courts;

-The four studies of cameras in the courts in New York, including the most recent study of 1997, chaired by Dean John Feerick all reach the conclusion that the experiment with cameras in the courtroom was successful, and that cameras should be permitted in the courts on a permanent basis;

-33 states currently permit cameras in the court under conditions similar to those which the Committee proposes, but the Committee proposal contains safeguards present in no other state;

-Based upon the Committee's interviews of people with actual experience with cameras in the courts in New York, the Committee concluded that there is no pattern of specific harm in specific cases and no substantial evidence that cameras adversely affect the outcome of trials;

-Cameras or televised trials can aid the public in understanding the legal system and the lawyer's role in it, and that public understanding and trust is fundamental to our system of justice and our ability to function as lawyers;

-That in those states which require consent of the parties for television coverage, such coverage is rare or non-existent;

Based upon the Committee's findings, the Committee recommends the following be implemented as part of legislation authorizing a two-year experiment:

1. That consent of the parties not be required to permit audio-visual coverage of judicial proceedings;
2. That there be television coverage of the proceedings of the Appellate Divisions and Court of Appeals of the State;
3. That applications for audio visual coverage of trials be made to the assigned trial judge no later than 30 days in advance of jury selection so that attorneys are not burdened with the issue on the eve of trial;
4. That the decision as to whether a particular trial is to be televised be decided by the trial court judge who is to take into account a number of factors and safeguards, including:

- Importance of maintaining public trust and confidence in the legal system
 - Importance of promoting public access to the judicial system
 - Parties' support of or opposition to the request
 - Nature of the case
 - Privacy rights of all participants in the proceeding, including witnesses, jurors and victims
 - Effect on any minor party, prospective witness, victim, participant in, or subject of the proceeding
 - Effect on the parties' ability to select a fair and unbiased jury
 - Effect on any ongoing law enforcement activity in the case
 - Effect on any unresolved identification issues
 - Effect on any subsequent proceedings in the case
 - Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness
 - Effect on excluded witnesses who would have access to the televised testimony of prior witnesses
 - Scope of the coverage and whether partial coverage might unfairly influence or distract the jury
 - Difficulty of jury selection if a mistrial is declared
 - Security and dignity of the court
 - Undue administrative or financial burden to the court or participants
 - Interference with neighboring courtrooms
 - Maintaining orderly conduct of the proceeding
 - Assessing the potential harm that may be caused to the patient-provider relationship
 - Whether disguises such as voice distortion or use of the mosaic effect will provide sufficient protection
 - Whether the electronic media has any greater impact than non-electronic access to the courtroom
 - Any other fact that the judge deems relevant
5. That there be no presumption in favor or against cameras in the court;
6. That the judge is specifically required to take into account the parties' support or opposition to television coverage;

7. That the trial judge's ruling be appealable to the Appellate Division *de novo* with an automatic stay;
8. That applicants to tape or broadcast trials be required to tape the trials in their entirety for educational purposes and to reduce the likelihood of taping solely for sound bites;
9. That the taping and broadcasting include only those parts of the trial which are presented to the jury and motions, arguments on evidence and any other matter not presented to the jury be excluded from the taping or broadcasting;
10. That a non-party witness may have his voice distorted and his face obscured without any showing for good cause, but simply upon request;
11. That non-party witnesses also have the right to object to having their testimony televised upon a showing of good cause which would include physical harm, damage of reputation, or other similar factors;
12. That defendants be able to prevent being televised on the same basis;
13. That special protections be given to victims of sexual assault and domestic violence by having a presumption against audio-visual coverage on all sex offense cases and all domestic violence cases;
14. That special safeguards be given for children, including an absolute prohibition on audio-visual coverage on any child. Any further prohibition on coverage of all cases involving children unless special findings are made;
15. That there be a presumption against coverage of matrimonial proceedings;
16. That the standards include specifically the support or opposition to the request;
17. That the limitations on television coverage contained in previous judiciary law section 218 be carried forward and include the following:
 - a) the right of the trial court having discretion throughout the proceeding to revoke, approve or limit the coverage;

- b) no audio pickup of conferences between attorneys and their clients;
- c) no coverage of an undercover police officer;
- d) no coverage of an arraignment or suppression hearing without consent;
- e) no judicial proceeding shall be scheduled, delayed or continued at the request of or for the convenience of the news media;
- f) no coverage of a witness if the coverage is liable to endanger the safety of any person;
- g) no coverage of a proceeding otherwise closed to the public; and
- h) no coverage which focuses on or features a family member of a victim or a party in the trial of a criminal case, except when such family member is testifying.

And, in addition,

- 18. That the State Bar fund the production of an educational videotape for journalists on how to cover trials within the context of legislation authorizing audio-visual coverage of judicial proceedings.
- 19. That the Office of Court Administration develop an enhanced judicial training program to familiarize all judges with the applicable statutory and administrative provisions and safeguards (as originally recommended by the Feerick Committee).

CAMERAS IN THE COURTROOM

INTRODUCTION

At the House of Delegates meeting held in June 2000, following the recommendation of the Executive Committee, the House called for the formation of a Special Committee to evaluate and make recommendations on the issue of audio/visual coverage of court proceedings in civil and criminal matters. In early September, President Paul Michael Hassett appointed the members of the Committee and since that time, we have followed the meeting schedule set forth in Appendix A.

The preliminary report of this Committee was presented to the House of Delegates at the January 27, 2001, meeting at which time comments were solicited. Additionally, comments were solicited from all local Bars and the relevant Sections. Since that time, the Committee has received comments from various Sections and Committees, all of which can be found in Appendix J. We appreciate those groups taking the time to respond, whether or not they agree with our conclusions.

In our preliminary report, we had included the concurrence of Mark Zauderer and since that time, we have received the concurrence of committee member Stephanie Abrutyn and the dissent of committee member Leroy Wilson, which are likewise included.

Martin Adelman, who is a member of this Committee, has dissented at length and his dissent is also included. The Chair and the members of the Committee particularly appreciate the role of Mr. Adelman on our Committee. We appreciate his bringing to us his perspective, both in the deliberations of the Committee and in the written dissent, and his collegiality in doing so.

The purpose of our work was to develop a record upon which the House could

make its decision. At the time the decision was originally to be made in June of 2000, much of this material was not before the House, and whatever the decision of the House, we hope that our efforts provide an informed basis for the debate.

Obviously, reasonable people can disagree about the issues, and predictably there was not unanimity on the Committee, any more than there is unanimity in the profession.

However, as a result of our research and deliberations, a consensus among a majority of the Committee developed. The majority consensus is that cameras should be permitted in the courts of New York with adequate safeguards, particularly to protect witnesses, but without a requirement that the parties consent to coverage.

We believe that our recommendations represent a balanced middle-of-the-road approach. Martin Adelman's dissent refers to "unrestricted television access", but the fact is that our proposal is far from unrestricted and contains a number of safeguards designed to protect the rights of all participants. Many of the safeguards we adopted were proposed by Mr. Adelman during the course of our deliberations and were voted against by some of our members. The fact that the approach is balanced is demonstrated in part by the concurrence of our member Stephanie Abrutyn and the comments from the Media Law Committee who believe we did not go far enough, as compared to Martin Adelman's dissent who believes we went too far.

We believe that cameras should be permitted in court for the benefit of the profession, the legal system and the public. We do not make these recommendations in an attempt to serve the media or to otherwise benefit the media or to serve the commercial interests of the media.

We recognize the primary purpose of a trial is to do justice and we recognize that criminal defendants are entitled to a fair trial under the Constitution. We further recognize

that these purposes are paramount to educating or informing the public about the legal profession and the legal system. However, we believe these objectives are not necessarily mutually exclusive and both can be achieved in appropriate cases with the proper safeguards.

Martin Adelman's dissent in the introduction makes the blanket statement that our study confirmed that "an average person may be lost to the fact finder or perceived as less credible." His dissent uses the term "may", but we found no actual pattern or problem of losing witnesses and particularly not where available safeguards were used. As will be discussed later, we propose that witness protections include an automatic right to the most modern mosaic to obliterate or disguise the witness' face and voice. Furthermore, additional protections are provided for witnesses based upon the consideration of a number of factors, including the risk of safety to any person.

BACKGROUND

From 1987 to 1997, cameras were permitted on an experimental basis in the courts of this state under Section 218 of the Judiciary Law, except for a one (1) year period. In 1997, experimental Section 218 was not extended and Section 52 of the Civil Rights Law, which prohibits coverage of trials, then became applicable.

The issue remained more or less dormant until the decision by Judge Joseph Teresi in People v. Boss, 182 M.2d 700 (2000), the so-called Diallo case. In that case, Judge Teresi found Section 52 prohibiting trial coverage to be unconstitutional "as an absolute ban on audio/visual coverage in the courtroom."

Thereafter, in Santiago v. Bristol, 273 A.D.2d 813, 709 N.Y.S.2d 724 (4th Dept. 2000), the Fourth Department held that the trial judge erred in permitting Rochester

television stations to intervene in a murder trial, ruling that the trial court had no authority to permit cameras in the court and declining to find Section 52 unconstitutional. The Santiago case was appealed to the Court of Appeals, but the appeal was dismissed because the case had been decided on the non-constitutional ground that the constitutionality of the statute should have been challenged under a declaratory judgment action. More recently, in Erie County, a trial judge permitted cameras to televise portions of a criminal trial. In so doing, she relied on her judicial discretion notwithstanding the earlier Fourth Department ruling in Santiago.

The issue is made all the more timely by the recent experience with the Presidential election ballot recount proceedings in Florida which were televised gavel to gavel in the trial court and the State Supreme Court. Further, the failure of the Supreme Court of the United States to permit cameras to televise one of the most important cases ever to be heard brought the issue to the forefront of public attention.

Most recently, in People v. Schroedel, Frank J. LaBuda, Sullivan County Court Judge, held that because of the decision in the Diallo case, courts have the discretion to permit cameras in the court. The court, in his discretion, permitted still cameras with the following language:

"All criminal trials in America must be open to the public and, consequently the media, under the United States and New York Constitutions, except under clear and compelling reasons to close such proceedings. The question is has the twenty-first century come to recognize a presumptive constitutional right to allow a nineteenth century technology, i.e., cameras in the courtroom?"

Thus, there is confusion in this state on the issue of cameras in the court and the

issue should be resolved for the guidance of the courts and the parties.

Public clamor, one way or the other, as discussed in Martin Adelman's dissent, is irrelevant.

EARLIER STUDIES

Our methodology was to not reinvent the wheel, but rather to begin by attempting to pull together studies and reports previously written on the subject. The documents we obtained are listed in Appendix B. We found that the Bar Associations and professional groups from other states which have studied the issue and prepared reports on the subject favored cameras in the courtroom. Contrary to the suggestion of Martin Adelman's dissent that somehow we have omitted "other state's studies" of Bar Associations opposing cameras in the court, such studies are not included because we did not find any notwithstanding the fact that we communicated with every Bar Association in the country asking for such studies.

The studies we did locate include a report by the Conference of Chief Justices of State Courts adopted on August 2, 1978. In the resolution, the Conference recommended that the Code of Judicial Conduct be amended to permit the supervisory court in each state and Federal jurisdiction to "allow television, radio and photographic coverage of judicial proceedings under their supervision."

In the late 1970's, the Florida Supreme Court, following a one (1) year experiment, determined that the fears that lawyers, judges, witnesses or jurors would be unable to perform their duties were "unsupported by any evidence." In Re Petition of Post-Newsweek Stations, Inc., 37 S.2d 768, 775 (Fla. 1979).

In determining to permit television coverage, the Florida Supreme Court stated:

"In reaching our conclusion we are not unmindful of the perceived risks articulated by the opponents of change. However, there are risks in any system of free and open government. A democratic system of government is not the safest form of government, it is just the best man has devised to date, and it works best when its citizens are informed about its workings."

Id. at 781.

In 1982, the ABA reversed its earlier position opposing cameras and adopted its Criminal Justice Standard 8-3 which removed the ban on cameras, but permitted such cameras in the sound discretion of the trial court.

The California Task Force for the Photographing, Reporting and Broadcasting in the Courtroom studied the subject shortly after the O.J. Simpson case. In recommending that cameras continue to be permitted in California courts with safeguards, the Task Force finding was similar to the position which will be recommended by this committee. Their report said:

"The task force believes balancing the competing policy interests compels a conclusion that a total ban on cameras in the courtroom would be inappropriate. The task force also believes that society's interest in an informed public, recognized in the planning and mission of the Judicial Council, is an important objective for the judiciary, which would be severely restricted by a total ban. Today's citizen relies too heavily on the electronic media for information; yet actual physical attendance at court proceedings is too difficult for the courts to countenance a total removal of the public's principle news source."

Judicial Council of California Administrative Office of the Courts, Report of the Task Force on Photographing, Recording and Broadcasting in the Courtroom, 10 (1996)

A pilot project was conducted in the Federal courts from July 1, 1991 through December 31, 1994. The program covered only civil proceedings and only in selected courts. Upon completion of the study, the results were evaluated by the staff of the

Federal Judicial Center which recommended that the coverage be extended to all Federal courts. However, the Federal Judicial Council, in a divided vote, voted not to permit cameras.

Thereafter, the Federal Bar Council Committee on Second Circuit Courts issued a report in 1998 recommending that cameras be permitted in the Federal courts.

"...it is the overwhelming consensus of the Committee that the public is entitled to exposure to courtroom proceedings. The experience throughout the country has been largely positive. The initial fear of a detrimental effect on court proceedings has largely not been borne out by the actual experience. Experiments too have demonstrated that participants become accustomed to the presence of the media in most situations -- so that the presence of the media is largely forgotten."

Federal Bar Council Committee on Second Circuit Courts, Recommendation on "Cameras in Courtrooms", 25 (1998).

The issue was studied in New York on four separate occasions and at the end of each experiment, the recommendation after each study was that the experiment be continued.

In March 1989, upon completion of the first experiment with cameras in the court, Judge Albert M. Rosenblatt, Chief Administrative Judge, issued his report. Judge Rosenblatt recommended that the experimental status of cameras in the court not end.

The conclusion he reached is stated in part as follows:

"The information gathered during this 'experiment' demonstrates that audio-visual coverage does not adversely affect judicial proceedings. The concerns expressed before the experiment have been satisfactorily answered by the actual experience with audio-visual coverage in the courts during the past fifteen months."

Albert M. Rosenblatt, Report of the Chief Administrative Judge to the Legislature, the Governor and the Chief Judge of the State of New York On Effect of Audio-Visual Coverage on the Conduct of Judicial Proceedings, 112 (1989)

Following the experiment of 1991, Judge Matthew T. Crosson, Chief Administrator, issued a report also recommending permanent enactment of the statute.

Similarly, in May 1994, a Committee chaired by Judge Burton B. Roberts issued its report and likewise, concluded that the experiment should end and cameras be made permanent. In so recommending, the Roberts Committee found the following:

"Based on this analysis, the Committee concluded that the benefits of New York's cameras in the courts program are substantial. Most important, audio-visual coverage of court proceedings serves an important educational function. . . These benefits heavily outweigh the minimal, if any, negative effects of the program. . .

Further, the numerous studies and surveys conducted in New York and throughout the nation uniformly have established that audio-visual coverage has no adverse impact on the vast majority of participants in court proceedings, including witnesses and jurors."

Report of the Committee on Audio-Visual Coverage of Court Proceedings, vi-vii (1994).

The Roberts report also contained a letter from Kevin M. Dillon, the President of the District Attorney's Association, detailing the past history of support for legislation permitting cameras in the court and expressing his continuing support.

Similarly, in 1997, cameras in the court was studied by a committee chaired by John D. Feerick, Dean of Fordham Law School. In recommending that cameras be continued, the Committee stated in part the following:

"Our review of the experiment, the fourth of its kind in New York since 1987, did not find any evidence that the presence of cameras in New York cases has actually interfered in a particular case with the fair administration of justice...We believe that the public nature of a trial

and the public's right of access to a trial support the adoption of a law permitting television coverage of court proceedings under the careful control and supervision of trial judges, who must retain their unfettered discretion to determine whether or not to admit cameras to their courtroom, taking into consideration the concerns of trial participants."

New York State Committee to Review Audio-Visual Coverage of Court Proceedings, *An Open Courtroom, Cameras in New York Courts*, 1995-97, 1 (1997)

Thus, each study of the experience in New York with cameras in the court pronounced the experiment to be a success and urged that it be continued. Similarly, nationally, all of the studies which came to our attention favored cameras.

Contrary to the suggestion in Martin Adelman's dissent, in our preliminary report we specifically recognized that, in each of the reports which recommended that cameras be permitted, there nevertheless were a minority of people surveyed who believed that there were problems with cameras. Both Martin Adelman's dissent and the Criminal Justice Section rely significantly on those minorities to argue that cameras pose a risk to fair trials. We carefully considered how to deal with that issue, and our determination was to attempt to interview people who have had actual experience with cameras in New York during the ten year experimental period to determine the extent to which the presence of cameras create real problems not otherwise present at trial. Significantly, during that period, consent of counsel was not required, but rather whether cameras were to be permitted was in the discretion of the trial judge.

Martin Adelman's dissent's reliance on the Marist Poll commissioned by the Feerick Committee is a good example of the methodology we purposely avoided. Our goal was to try to determine what actual experiences were with cameras in the court, rather than what people might say in the abstract about cameras to a pollster. Our view was that if

those general attitudes in the Marist Poll caused a real problem, they would appear in reality in actual cases. We found no evidence that those attitudes carried forward.

INTERVIEWS

Our methodology in conducting the interviews was to attempt to talk to people about specific cases and specific problems. In so doing, we hoped to avoid generalities and fears of what might happen. Our hope was to go behind the surveys which indicated that a minority of people had problems to determine if any problems were real and recurring and related to the presence of cameras. We wanted to see if isolated incidents were being overblown. We also wanted to hear specifics because we believed that specifics are more credible in determining the extent of a problem. Further, specifics would aid us in fashioning safeguards or remedies to alleviate those problems.

To obtain names, we wrote to each Bar Association in the state to identify people who had experience with cameras (See Appendix C). Each of those people, to the extent they would respond, was interviewed. Furthermore, the New York County Lawyers' Association interviewed New York City lawyers with actual cameras experience. The State Bar Committee members interviewed 45 lawyers and judges. In addition, we held a meeting on October 26 at which time the Committee interviewed other people with actual experience (as noted in Appendix A). (See also Appendix D for list of persons interviewed by phone or letter and Appendix E for a copy of the Questionnaire).

Our review of the results of the interviews is that there was no such pattern of recurring instances of problems which affected the outcome of trials, with cameras present. With regard to the question of whether cameras made jury selection any more difficult, 27 replied that it did not. One replied that someone did not want to sit because of the

publicity, but publicity is a fact of life in a high profile case related to the presence of cameras. One was concerned that cameras affected the jurors' perception.

Similarly, on the question of distraction of jurors, the overwhelming response was that there was no effect, except for the distraction of camera people coming in and out of the courtroom and the use of flash cameras. Specific measures are recommended in this report to eliminate this distraction. With the exception of physical distraction which will be dealt with later in the report, only one person reported that jurors were distracted.

In our view, the ultimate issue is whether cameras in the courtroom adversely affect the outcomes of trials, thereby depriving parties of their right to a fair trial. As pointed out in Martin Adelman's dissent, proponents of cameras often argue that cameras do not adversely impact the outcome of cases because "no case has ever been reversed because of a camera's presence", which is true. However, the purpose of our interviews was to determine the extent to which lawyers claimed in specified cases that the outcomes of the cases had been affected by cameras in a specific way even though the result was not appealed.

During our interviews, we asked that ultimate question: Was the outcome of the case affected by the presence of cameras? Of the 22 lawyers and judges who answered the question, 20 said no that cameras did not have any affect. One said yes, but did not know for sure, and one said that he did not know.

Similarly, the New York County Lawyers interviewed more than 25 lawyers with actual experience who were asked essentially the same question with essentially the same result, according to Margaret Finerty, chair of the New York County Lawyers' Special Task Force.

Certainly, with the adamant opposition to cameras of many of the people whom we

interviewed, if cameras had an adverse impact on the outcome of a trial, we would have been told so.

While our survey is hardly scientific in that we are not social scientists, we did expect if there were other real problems we would see them on more than a random basis.

We concluded that had there been a significant pattern of concern, more lawyers would have reported an actual impact on their case. People who try cases know when their case has been hurt. Cases are not tried under laboratory conditions and can be affected by such random acts as insufficient time on voir dire, the doctor not being able to find a parking place, or a trial not starting on time, or the witness having a fight with his spouse before coming to testify, or simply not being able to understand the questions in a courtroom. We, as lawyers, know when a problem has affected the outcome of a trial and we would have expected to see patterns or at least recurring problems if cameras adversely impacted trials and we did not see any.

From all of the questionnaires from our interviews, Martin Adelman's dissent was able to cite only two claims that witnesses were lost because of cameras. However, in the questionnaire from the Albany lawyer who claimed to have lost two witnesses as a result of cameras, the following question was asked:

Are you able to separate the unwillingness the witness expressed because of the cameras from the fact that there would be other media coverage in an open courtroom with a crowd?

No.

(Compilation of Telephone Interviews, Section 5d., p. 142).

Thus, the lawyer was unable to distinguish whether the witness' reluctance was because the case was highly publicized and whether the witness would have declined to

testify even in the absence of cameras. Furthermore, he was unable to remember whether he asked that the witness' face be obliterated or obscured. Under the law in effect during the experiment, a witness was automatically entitled to have his or her face obscured and voice disguised. The fact that he said did not recall whether he asked for the full protections for the witness indicated to us that the problem was avoidable.

Martin Adelman's dissent also cites the testimony of the Public Defender who stated that "he believed he lost one witness because of cameras", but Martin Adelman's dissent omits the further statement that the Public Defender did not bring the problem to the attention of the judge because it was early in the experience. He was of the opinion that a disguising feature such as a blue dot or mosaic would have helped. The Public Defender was also of the opinion that "if cameras were hidden behind the wall and were otherwise unobtrusive that would solve the problems of witnesses' nervousness."

Martin Adelman's dissent, in arguing that television cameras affect witness demeanor, relies on selected parts of the comments from only five of the people we interviewed, and those comments must be placed in context.

The Ithaca lawyer, extensively quoted in Martin Adelman's dissent specifically stated that "I do not recall any defense witness who did not testify on account of the presence of the camera." He also stated that he did not know whether any witnesses in his cases became so nervous that their nervousness affected their testimony.

These comments are particularly important because the Ithaca lawyer, in his 23-page response to our questionnaire, was clearly opposed to cameras and by his own statement was opposed to cameras from the beginning. Therefore, if there were in fact any defense witnesses who did not testify, he would have recalled and he also would have been able to determine if his case was affected.

Martin Adelman's dissent also refers to a Suffolk lawyer, but omits from the quote from the questionnaire the following question and answer from the same lawyer:

Did you have any case in which a witness was reluctant to testify because of the presence of cameras?

No.

With regard to the Erie County Assistant District Attorney, Martin Adelman's dissent quotes him as saying the following:

In almost every case, at least one witness did object (nearly always the family of the victim and frequently eye-witnesses).

Martin Adelman's dissent omits the sentence which follows the quote which is:

The rationale was generally fear for personal safety, as the witness frequently lived near the defendant or at least one of the defendant's friends or family.

(Compilation of Telephone Interviews, Section 5, p. 146)

A specific standard in determining whether a court will permit a witness not to be televised or permit cameras at all is the personal safety of the witness. Indeed, this safeguard was included to address this very concern. There is no indication by the Assistant District Attorney that any witnesses were lost or that the judges did not honor the request for exclusion. Rather, the indication is that judges freely honored the request not to televise witnesses.

The Rochester Public Defender, cited in Martin Adelman's dissent, stated he has seen cameras impact the case, (usually the prosecution's case) because the witness is not as credible or seems more guarded. The beginning of that answer is as follows:

Thinks that even professional witnesses (coroners, etc.) become more nervous when cameras are present.

(Compilation of Telephone Interviews, Section 6, p. 148).

No other witness cited this potential or noted such an impact.

In addition to the interviews conducted by individual members, the Committee also conducted one day of in-person interviews with the full Committee in New York City. From those interviews, Martin Adelman's dissent quotes at length from the statement by a New York City prosecutor whom he called to testify before the Committee. However, the prosecutor also acknowledged the fact that in each of the cases in which she had advised the judge of problems with the witnesses, cameras were not permitted. Most importantly, she also acknowledged that she had not been involved in a case in which cameras had been in the court. The majority of the Committee concluded from her testimony that her concerns were about problems with the media in general, including media in the corridor, but she did not have the specific experience which we were seeking with regard to actually having cameras in the court.

Martin Adelman's dissent also relies on the statements by a veteran Albany defense lawyer. In evaluating the testimony of the lawyer, the Committee took into account the fact that our purpose in interviewing was to look for specific instances of problems in specific cases. During the course of our interview, we asked the lawyer to identify any cases in which he claimed to have lost witnesses and he was unable to do so in the interview. We asked him a number of times to provide us with the names of the cases and specific problems so that we could better evaluate them. We never received a reply and our purpose in finding identified cases with specific problems we could evaluate was not fulfilled.

At the same in-person interviews referred to in Mr. Adelman's dissent, Judge Leslie

Crocker Snyder appeared before the Committee and stated that as a judge she had allowed cameras in the courtroom in a number of instances and said "My experiences have been very positive." She said she was unaware of any negative experiences, did not know of any reversals and had not heard of any cases in which witnesses ultimately refused to appear. She further stated:

"I just feel that my experiences have been so positive that I think it's almost a Pavlovian reaction on the part of the defense to feel that anyone who is charged with a crime and is, of course, presumed innocent shouldn't have his or her picture taken, and I come back to the fact of the media is there anyway.

We're really talking about the degree of coverage, not about whether the case is covered. If we were sitting here talking about whether a case should be covered we'd be talking about totally different circumstances, but we're not."

Cameras in the Courtroom Committee, Minutes of Meeting, 10/26/00, p. 266-267

She testified that cameras are not intrusive if the court controls them. She also commented extensively on the intrusiveness of print media, including sketch artists and stated that she did not know how you could exclude the print media which is more intrusive and cameras which are not intrusive.

On the issue of the invasion of the witness' privacy, she stated the following:

"Anything negative that might come out should the witness take the stand would be in the papers, so I can't really come off my point, that we're not talking about excluding the media; we are just talking about one kind of media coverage to be excluded, and I think it's just a difference of degree."

Cameras in the Courtroom Committee, Minutes of Meeting, 10/26/00, p. 268

Judge Snyder, in commenting on the issue of consent, said:

"I think that there would be a problem, but I would not

want to see a statute which involved the issue of consent, because I don't think that you'd ever have cameras then.

I think that if there were consent as a requirement in the statute that would essentially vitiate the import of the statute. It would have very little practical effect."

Cameras in the Courtroom Committee, Minutes of Meeting, 10/26/00, p. 246

Judge Charles Siragusa, who is now a Federal District Court Judge in the Western District of New York, was formerly the First Assistant Prosecutor for Monroe County. He stated that he had prosecuted three or four cases which were televised. He told our Committee that none of the initial concerns regarding cameras as being disruptive proved true in his cases. He testified that the concern that lawyers would play to the cameras was not realized. On the issue of witnesses, he said he could not find any situations that he prosecuted where witnesses said they would not testify because of cameras in the courts. On the issue of nervousness, he said "I think the trial itself makes people nervous and don't really think that adding cameras took it over the edge where they would have any greater inability to recount."

Judge Siragusa, in his interview succinctly stated the role of cameras in public education, as follows:

"However, I think it's, at least in my experience, overridden by the fact that I generally have to say, based on the feedback that I had from trials that involved cameras in the courtroom or proceedings that involved cameras in the courtroom, was that the public that did watch it walked away with an opinion of the judiciary and of counsel in cases that they acted in a professional fashion.

Too often I believe that the public thinks that this whole system of justice is something that's shrouded in secrecy. The lawyers disappear into the back with the judges.

They come back and have no clue as to what went on in there, so I'm proud of the way that the justice system works in my community, and I think that anything that opens it up to the public is a good thing."

Cameras in the Courtroom Committee, Minutes of Meeting, 10/26/00, p. 159-160

Judge Siragusa also stated that he did not see witnesses reluctant to come forward because of cameras in the courtroom.

In our view, the ultimate issue is "Do cameras in the courtroom adversely affect the parties right to a fair trial?" We looked for any pattern of cameras having an adverse effect and found none. We also looked simply for any identified cases in which the outcome was affected by some demonstrable or specific incident or fact relating to cameras.

During our interviews, we asked that ultimate question: Was the outcome of the case affected by the presence of cameras? Of the 22 lawyers and judges who answered the question, 20 said no that cameras did not have any effect. One said yes, but did not know for sure, and one said that he did not know.

Similarly, the New York County Lawyers interviewed more than 25 lawyers with actual experience who were asked essentially the same question with essentially the same result, according to Margaret Finerty, chair of the New York County Lawyers' Special Task Force.

The result of the interviews was that the projected harms and what-ifs of cameras in the courtroom were simply not realized. Some of the concerns such as disruption by cables and lights and witness reluctance can be dealt with through the safeguards we recommend. We saw no pattern of difficulty which would outweigh the benefits of having cameras in the court.

RULES IN OTHER STATES

The laws of the other 49 states vary from state to state as to the degrees of access provided to cameras and the process by which access is allowed (See Appendix F). In fact, among the states there are so many variations that statements with regard to specific numbers of states in particular categories are difficult.

However, according to our research, 33 states permit camera coverage at the trial level of civil and criminal cases without requiring consent of the parties and witnesses. A few states apparently permit cameras without any review, but the overwhelming majority of the states permit access only upon application by the media under prescribed procedures. The court is required to consider the impact of the presence of electronic media upon the proceedings, including upon the right to a fair trial or the "fair administration of justice" and upon the participants, including the parties and the witnesses. Where access is permitted, nearly every state expressly permits the court to exercise discretion to bar filming or broadcast where the objector demonstrates good cause, which is usually defined to include prejudice to the parties or participants or a harmful impact upon the individual being filmed.

Most of the rules or statutes of various states do contain certain restrictions on the presence of cameras, including prohibitions on filming: voir dire and the jurors generally; matters otherwise closed to the public; informants or undercover agents; conferences between clients and attorneys; and conferences between counsel and the presiding judge held at the bench or in chambers. In addition to those states which require consent of the parties, a number of states prohibit coverage of minor witnesses altogether, in any type of proceeding.

Six states require the consent of the parties and/or witnesses to the presence of cameras at the trial level (Alabama, Arkansas, Louisiana, Minnesota, Oklahoma and Texas); Maryland permits non-governmental parties to object to the presence of cameras; and two other states require consent of a broad category of witnesses (Kansas prohibits coverage of witnesses and victims of crimes who object; Ohio permits victims and all witnesses to object). Utah permits still cameras only in the trial courts.

Finally, the majority of states permitting access have enacted or promulgated technical standards which prescribe the absence of distracting light or sound, microphones, wires and equipment; a single or limited number of still cameras, audio systems and television cameras; requirements for pooling; proper attire; location of all equipment and personnel in areas designated by the court and a prohibition on movement within the courtroom.

Two states, Mississippi and South Dakota, exclude cameras from the court entirely, as does the District of Columbia as a part of the Federal system.

The approach we ultimately suggest is in accordance with the 33 states that permit camera access at the discretion of the trial court, but we recommend more restrictions and safeguards than are typically the case in other states.

Contrary to the suggestion of Martin Adelman's dissent, we recognized in our preliminary report that there are 17 states which limit camera access to a significant degree or exclude it.

The reason the reports from these states are not included is because we found no study from these more restrictive states, despite our request of every state asking for any reports on cameras.

PREVIOUS STATE BAR POSITIONS

The New York State Bar Association position has evolved over the years. In 1979, the Association adopted a resolution opposing permitting cameras in the court. However, in 1980, 1987, 1989 and 1991, the House of Delegates approved cameras in the court as a part of the state's ongoing experiment which did not require consent of counsel. The State Bar changed its position from its four earlier positions on June 25, 1994 by conditioning cameras in the court upon consent of both parties. We simply recommend that the State Bar return to its position adopted on four separate occasions, but with additional safeguards.

ROLE OF CAMERAS

The Committee believes that public understanding of the legal system, the role of lawyers and juries, and public confidence in the administration of justice are part of the foundation upon which the rule of law rests. However, because of a variety of factors over the last 20 years, including direct attacks, confidence in lawyers and our legal system has been greatly eroded.

We believe that, under the proper circumstances, cameras in the court can aid the public in understanding the legal system and the lawyer's role in it. We had hoped that there would be reliable studies demonstrating the effect of televising trials on public understanding, but we found none. However, we have such confidence in what we do as lawyers that we believe if the public can see what we do in the courtroom and see how jurors reach their verdicts, some of the misunderstanding of the lawyers' role in the legal system will be removed. "Seeing is believing."

The American Bar Association Standing Committee on Public Education, in recommending the continuation of the Federal experiment, essentially reached the same conclusion as follows:

"As respect for the legal profession and the courts is enhanced, so is the effectiveness of our system of justice.

There is perhaps no more effective single vehicle for generating increased understanding and respect for our justice system and the role of our court than the televising of its proceedings."

Recommendation of American Bar Association Standing Committee on Public Education (1991).

We believe that what we do as lawyers and how the legal system works will withstand scrutiny because we fundamentally have confidence in the system. Most of us have had the experience of having lost a lawsuit, but having a grateful client because they could see how hard we worked and how the system worked. We believe the same principle will apply to televising trials.

We also believe that if people are permitted to see trials and legal proceedings, they will better understand the results even if they do not agree with them. The Diallo trial is an excellent example of how televising a court proceeding can diffuse a potentially dangerous situation and, as a result, permitted people to better understand the outcome.

The whole experience with the recent Presidential election ballot recount issue in Florida demonstrates the importance of audio/visual coverage of judicial proceedings. We believe that watching the lawyers in Florida, on both sides, conducting trials from early in the morning until late at night, and the judges grappling with tough decisions, aided in the public's understanding of the role of the law and the judiciary and acceptance of the result.

A common argument against cameras in the court is that broadcasters only use sound bites and, therefore, television does nothing to educate the public. The same complaint can be made of all television news, whether it is coverage of the crisis in the Middle East, a candidate's proposal for educational reform, or for any other significant issues. However, the fact is, television is the primary source of news for a majority of Americans. Therefore, most of the

citizens of this country are informed about all significant issues from two-minute segments on the evening news.

We cannot assume that the public is totally uninformed about current events as the result of relying on television news. Rather, the expectation is that the repetition of television stories on a particular subject does have the cumulative effect of informing. Furthermore, actual footage from the trial is certainly no less informative and hopefully more informative than the filming of lawyers, witnesses and defendants in the courthouse corridors which inevitably occurs in a high profile case.

There is universal agreement that gavel to gavel or extended coverage does have an educational value. To eliminate or restrict to the point of elimination, television coverage because of sound bites means that we will also lose the educational value of more extensive coverage.

To encourage broadcasters to do more than show short clips, we propose that as a condition to cameras being permitted in the court, broadcasters be required to tape the entire case. The purpose of the requirement is to prevent the jury from knowing what witnesses the broadcaster believes are important so as to avoid influencing the jury. We also believe that because of the commitment of time and resources required, broadcasters will be more likely to use more or all of the tape which their resources have produced. We also recommend that the tapes be filed with the Office of Court Administration for monitoring compliance with the rules and for potential educational purposes. We also recommend that the tapes of the actual broadcast footage be filed as well.

We make our recommendations on the same assumptions upon which the First Amendment is based. In the free market place of ideas, the truth will ultimately prevail if people

are permitted to see it and know it. To the extent that cameras permit people to see actual trials, and to actually hear more about legal proceedings, we believe in the long run that people will better understand lawyers and the legal system.

We have reviewed the comments from the Media Law Committee and others objecting to our proposal to require the taping of the entire trial. However, we decline to change our proposal because we believe that the very objection that the taping of the entire trial is not practical actually supports the idea that if stations are required to tape the entire trial there will be fewer stations who come in simply to obtain a sound bite.

Martin Adelman's dissent cites the book *Tabloid Justice: Criminal Justice in an Age of Media Frenzy* for the proposition that television coverage does not educate the public. However, the authors did not even purport to measure the effect of people watching televised trials upon their attitudes toward the justice system.

The author's thesis is that the overall media frenzy regarding highly publicized cases taints the public's view toward the justice system. We know that the surveys quoted in Martin Adelman's dissent do not purport to survey public attitudes regarding televised trials because a case about which people were asked did not even involve a trial let alone a televised trial. Martin Adelman's dissent omits from the list of cases about which people were surveyed the investigation into the death of Jon Benet Ramsey, for which there has not been an indictment, let alone a trial.

Furthermore, the book is not simply about television coverage, but rather "*Tabloid Justice*" is defined by the authors to include all media coverage including newspapers and other periodicals. A portion of the book criticizes such publications as The New York Times, Time and

Newsweek in covering cases.

In the survey of people's attitudes towards what the author has referred to as "tabloid cases", the question was asked of the people being surveyed as to how familiar they were with the facts surrounding cases and the surveyor was asked to rate their level of familiarity. Critically, the survey did not ask whether they had actually seen the trial. Therefore, the self-rated level of familiarity was from all sources, including print.

Additionally, if the person being surveyed had been asked the question whether they saw the trial on television and the comparison of the people's confidence in the legal system who had seen the trial as compared to those who had not, then the survey would be probative. As it is, the survey has nothing to do with televising trials.

Similarly, Martin Adelman's dissent includes a discussion of the Feerick survey of 350 judges regarding the effect of televising judicial proceedings on the public's understanding. The judges surveyed did not necessarily have experience with cameras. However, to use Martin Adelman's dissent's logic, if 47% of the judges surveyed believe that the accuracy of news accounts was improved and 45% believed that it enhanced public understanding, then that is progress. Martin Adelman's dissent refers to the content study by the Federal Judicial Center. However, the Federal experiment did not have the provision we propose requiring the entire trial to be taped. Beyond that, however, during the experimental period in Federal Court, Court TV broadcast nine trials from the Federal courts in New York. All of the cases were civil cases because the Federal experiment was limited to civil cases.

As a result of the Federal experiment, viewers watching Court TV were given the opportunity to see a case involving false advertising under a trademark, and a hearing as to whether gays should be permitted to march in a St. Patrick's Day parade. They would have had

the opportunity to see First Amendment cases involving the Chairman of the Black Studies Department of the City University of New York who believed that he had been discharged because of comments he made. They would have seen cases involving copyrights of James Dean postcards and a wrongful death case in which the claim was made that policemen did not protect the plaintiff's daughter from her boyfriends. They were also given the opportunity to see a case involving survivors and widows suing the Lebanese Shiite Moslem Sect arising out of the hijacking of a Kuwaiti airliner.

Contrary to the common perception that few civil cases are televised, Court TV, during the experimental period in New York, actually televised more civil cases than it did criminal cases, with 38 civil cases and 29 criminal cases being televised.

Those trials included a case in which five people dying from asbestos related cancer sued several corporations for negligence, a civil case brought against Bernard Goetz by the person he shot, and a case brought against a school district for failure to admit a son to the National Honor Society. The cases include an 18-year old high school student who was shot by a high school student who brought a lawsuit against the school district for permitting the students to bring guns into the school. There were cases involving age discrimination, wrongful termination and medical malpractice.

The criminal cases did not include only tabloid or sensational cases. For example, the cases included the hearing as to whether Clark Clifford's and Robert Altman's assets should be frozen as a part of a criminal case, a teacher who was convicted of extorting money from students for grades, and the case of a person who confessed to murder during an Alcoholic's Anonymous meeting. The cases also included the Colin Ferguson trial which involved not only a mass murderer but also showed how the courts deal with pro se defendants. The cases

included the trial of two plain clothes nuns who were charged with trespassing during a protest at the Department of Social Services.

These televised cases do not include the full trials televised locally by local cable television of which the Committee is aware of several. However, the numbers are not kept by OCA.

During a period when we spend countless time trying to determine how to inform the public about what we do and how the legal system works, trials of this type seem to the majority of the Committee to be far more informative than all of the PSA's which we could possibly televise.

We believe that the viewer who saw any of these trials, whether for entertainment or education, or more likely, for a combination of both, could not help but be educated about how the legal system works and the lawyer's role.

CONSTITUTIONALITY OF SECTION 52

For purposes of this study, we put aside the issue of whether broadcasters have a constitutional right to be in a courtroom because the United States Supreme Court, the New York Court of Appeals, or any Appellate Division have not so ruled. At the present time, the constitutionality is undetermined. If, in the future, which is possible, a court may so rule, then much of the issue will be removed from us. In the meantime, we lay aside the issue of the constitutional right and make these recommendations as if there is no such right.

However, we do believe that the public's fundamental right to know how their government works includes the right to see and observe the workings of the court, as long as it is consistent with the protection of the rights of litigants. The trend over the last 40 years toward more open government is salutary and should be extended, to the extent possible, to

the courts without compromising the parties' right to a fair trial.

APPELLATE COURT COVERAGE

The coverage of the arguments of the Florida Supreme Court permitted the public to see lawyers passionately and ably arguing for their clients and demonstrating that there were reasonable differences on both sides of the issue. Similarly, the delayed broadcast of the audiotapes of the U.S. Supreme Court permitted the public to hear and better understand appellate advocacy.

Unfortunately, broadcast media coverage of appellate arguments in this state is rare. Many of us have had experiences involving high profile cases which were extensively covered at the lower court level, with no media present at the argument of the appeal.

The New York Court of Appeals permitted videotaping from 1986 to 2000, but the broadcasts have been sporadic and were never televised consistently on a statewide basis. The Court of Appeals welcomes television stations to provide audio/visual coverage of oral arguments, but the coverage is unfortunately rare.

We believe that lack of coverage of appellate arguments at the Court of Appeals and Appellate Division levels is a missed opportunity for public education with virtually no risk of adverse impact on the proceedings. Television can cover appellate arguments without fear of an effect on witnesses or juries because neither is present. Furthermore, in our view, Section 52 does not prohibit the coverage of appellate arguments because no witnesses are subpoenaed. Anyone who argues that lawyers or judges grandstand at Appellate Court arguments because of the presence of cameras simply has never argued before the Court of Appeals. There, advocates find that the least of their worries is the camera and the problem is to be persuasive and answer the questions in the short time permitted.

Significantly, the Committee received no comments from any group arguing against expanding television coverage of Appellate proceedings. Therefore, we believe that efforts should be made by the judiciary to develop a method whereby the media is informed of cases being heard and that the media be permitted to televise the arguments in such cases. The New York State Bar Association, and perhaps this Committee, can be helpful in that effort.

CONSENT

We believe that cameras should be permitted in the trial courts of New York notwithstanding the absence of consent of the parties, provided other safeguards are present.

The proponents of consent argue that consent will be given. Unfortunately, that has generally not been the case in states which require a party's consent for cameras. With a few exceptions, there may be an occasional trial televised, but the reports we received from states requiring consent was that television coverage of trials was minimal or non-existent.

Furthermore, Alaska and Tennessee deleted their consent requirements because of the lack of television coverage.

Apparently, consent was given for the televising of arraignments by defendants during the experimental period in New York. However, the strategic calculation to permit the defendant to profess his innocence in public is not applicable to trials.

During the course of the interviews, there was some indication that some lawyers will decide that it is in their or their client's interest to have cameras in the court. If the experience in New York is like the experience in other states, there will be only a few such instances.

Furthermore, the problem with relying on attorney consent is that there are cases in which the client's or attorney's strategic interest in having cameras in the court is outweighed by the public's need to know about the case. An extreme example of a case invested with public

interest far outweighing the client's individual strategic calculation was the Nuremberg Trials which were filmed. The Florida Presidential election ballot recount cases are also examples of cases in which the public interest would have outweighed the right of election commissioners to withhold their consent to televising their testimony because of their embarrassment. In the Diallo case, public interest also outweighed individual defendant strategic calculations.

Another fact which emerged from the interviews is that there are lawyers who dislike and mistrust the media. For them, under no circumstances would they permit cameras under any conditions.

Therefore, if the consent of the parties and attorneys is required, there will be cases in which the public interest dictates that they be televised, but consent to televise will not be granted because of the attorney's attitude toward the media or because of his client's strategic calculation. Contrary to the suggestion in Martin Adelman's dissent, if a case involving a public interest cannot be fairly tried with television cameras, then the judge can rule to exclude cameras. What we are talking about are cases which could be broadcast in the public interest without interfering with a fair trial, but will not be simply because of an individual lawyer's or his client's attitude toward cameras. We believe that for these reasons consent should not be a condition to televising a trial.

Furthermore, the issue before us is not whether there will be media coverage of a trial. In any case of sufficient interest to warrant application by a broadcaster to have cameras in the court, media attention will otherwise be inevitable. During the course of the interviews, the inability to separate the proposed harm of cameras from media coverage in general was apparent. For example, there is concern about showing the defendant on television in court without consent. However, defendants in high profile cases are routinely shown on television

now, either going in and out of the courthouse, or sometimes, unfortunately, in a so-called "perpetrator's walk" where the defendant is expressly made available for photographing.

The point is that we believe that much of the argued harm of having cameras in the court is no different from having an open court with newspaper reporters and sketch artists. Media will be involved in a high profile case, with or without cameras in the courtroom. As support for the dissent's argument that cameras are "different", he relies on the words of Chief Justice Earl Warren and Justice Harlan in 1965. Fortunately, since that time we have experience in 33 states and ten years of experience in New York so we need not rely on what judges thought 36 years ago about the threat of television.

Therefore, we believe that in balancing the potential benefits of cameras in the courtroom against the absence of a clear pattern of problems with cameras, New York should join with the majority of other states in the country which permit cameras in the discretion of the judge, but without the requirement of consent of the parties.

PREVIOUS LIMITATIONS IN SECTION 218 TO BE CARRIED FORWARD

We recommend that the previous conditions and limitations under which cameras were permitted under Section 218 be carried forward (See Appendix G).

The limitations include:

- 1) the right of the trial court having discretion throughout the proceeding to revoke, approve or limit the coverage;
- 2) no audio pickup of conferences between attorneys and their clients;
- 3) no coverage of an undercover police officer;
- 4) no coverage of an arraignment or suppression hearing without consent;

- 5) no judicial proceeding shall be scheduled, delayed or continued at the request of or for the convenience of the news media;
- 6) no coverage of a witness if the coverage is liable to endanger the safety of any person;
- 7) no coverage of a proceeding otherwise closed to the public; and
- 8) no coverage which focuses on or features a family member of a victim or a party in the trial of a criminal case, except when such family member is testifying.

We believe that combining these safeguards with the additional safeguards we propose will minimize the possible adverse effect of cameras in the court.

ADEQUACY OF NOTICE

A recurring and almost universal complaint with the earlier experiments with cameras, and which was repeatedly referred to in our interviews, was that the media routinely ignored the previous seven day requirement and applied at the last minute.

Under the earlier statute, application could be made in less than seven days with a showing of good cause. The problem was that apparently the good cause requirement was essentially ignored and applications were accepted at any time.

We believe that arguing the issue of cameras in the court on the eve of trial does a grave disservice to the parties and to the lawyers. During the last few days before a trial, preparation for trial and engaging in the incredible amount of work to properly present a case is paramount; lawyers must not be distracted from their primary duty of preparing for trial. In preparation for trial, any problem at the last minute is magnified.

We believe, therefore, application for television cameras should be made no later than 30 days in advance of jury selection, and that notice requirement not be waivable except under very limited circumstances discussed below. We make these recommendations for a number of reasons. First, more time will provide the attorneys with a better opportunity to assess any witness problems they may have with cameras, and to adequately advise the judge. The judge will thereby have more time to consider the issue as well. Furthermore, time is needed under our approach to appeal to the Appellate Division.

We recommend 30 days notice because it was considered by counsel for Court TV to be reasonable, and seemed to us to provide sufficient time. The only exception to the rule would be if the fact of the proceedings was not knowable 30 days prior to the time. The Florida Presidential election ballot recount proceedings is a good example of a case in which a broadcaster could not provide a 30 day notice because the proceeding had not been started within 30 days.

Under this standard, if a broadcaster can demonstrate that knowledge of the proceeding was not knowable, then the judge can set a reasonable period of time from the time that it was knowable. This exception, however, is not to provide the equivalent of a law office excuse whereby the broadcaster can simply say, "we were busy with other cases and did not know about it."

We have reviewed the various objections to the 30 day period as being too long, but have determined that avoiding the problems created by trial counsel having short notice of a broadcaster's interest is paramount to any inconvenience caused to the media.

APPLICATIONS FOR COVERAGE

Our recommendation is that the application for permission to televise be made to the trial judge assigned and that the judge make written findings on the record as to whether to permit cameras at the trial. If a trial judge is not assigned at the time of the application, a mechanism will need to be developed to assign a judge to hear the application.

We recommend that the following statement and standards be adopted for determining whether to permit cameras in a civil or criminal trial:

There is no presumption for or against cameras in the courtroom but rather, each decision must be made on a case-by-case basis with the judge carefully weighing all relevant factors including the following:

1. Importance of maintaining public trust and confidence in the legal system
2. Importance of promoting public access to the judicial system
3. Parties support of or opposition to the request
4. Nature of the case
5. Privacy rights of all participants in the proceeding, including witnesses, jurors and victims
6. Effect on any minor party, prospective witness, victim, participant in, or subject of the proceeding
7. Effect on the parties' ability to select a fair and unbiased jury
8. Effect on any ongoing law enforcement activity in the case
9. Effect on any unresolved identification issues

10. **Effect on any subsequent proceedings in the case**
11. **Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witnesses**
12. **If there is an impact, is it ameliorated by voice distortion or use of the mosaic effect**
13. **Is the impact any greater between radio or television**
14. **Effect on excluded witnesses who would have access to the televised testimony of prior witnesses**
15. **Whether there is potential harm to the patient/provider relationship**
16. **Scope of the coverage and whether partial coverage might unfairly influence or distract the jury**
17. **Difficulty of jury selection if a mistrial is declared**
18. **Security and dignity of the court**
19. **Whether the equipment and plan of operation will be obtrusive or distracting**
20. **Undue administrative or financial burden to the court or participants**
21. **Interference with neighboring courtrooms**
22. **Maintaining orderly conduct of the proceeding**
23. **Any other fact that the judge deems relevant**

These standards for the application were adapted from the standards in effect in California, but with important additions.

Our proposal makes clear the fact that there is to be no presumption for or against cameras in the court. We believe that a level playing field will best serve the delicate balance between assuring a fair trial and serving the public interest. The absence of a presumption should also be made clear so that the courts do not consider the application simply on a pro forma basis.

We have reviewed the various requests or proposals that there be a presumption in favor of coverage, but we continue to oppose any such presumption. Notwithstanding the comments, we particularly want the courts to realize that there is no presumption and that each application should be taken seriously and carefully.

Martin Adelman's dissent argues that because public confidence and public access to the judicial system are mentioned first in the standards, there is some indication of priority. That is not so, and any such inference should not be taken. The fact is the standards could be criticized by those more in favor of cameras by the fact that only two of our proposed standards relate to public access and the remaining 21 are factors militating against public access.

A recurring theme during some of the interviewing was that there were problems with cables, lights, the clicking of still cameras, people coming in and out of the room with tapes, thereby distracting the trial. We are of the understanding that with modern technology, there is absolutely no reason for any awareness of the cameras whatsoever. The cameras should be noiseless, and there should be no reason for testimony to be disrupted by tape changes. We believe the court should take into account the nature and type of equipment to be used and to monitor the equipment. If, at any time during the course of the trial, the trial is disrupted, the court should not believe its hands are tied, but

rather stop the televising. We also believe that this is one area in which modern technology helps with concerns.

Furthermore, we are of the view that the so-called "mosaic" which obliterates the face and the use of voice distortion will provide assurance to reluctant witnesses rather than simply not televising the trial. Those who would broadcast a trial would have a duty to use state-of-the-art equipment in all aspects of the case, including the obliteration of the witnesses' face and voice distortion. With that technology, we believe witnesses can be reassured, as a number of the people we interviewed so stated.

We believe the standards cover the principal problems and concerns about permitting cameras in the court. Only the first two support camera coverage with the remainder relating to the rights of the parties. Of particular note, the court is to take into account the parties' support or opposition to the request.

APPEALS

Originally, we proposed the appeal from an order regarding television coverage be made to the Administrative Judge *de novo*. However, on the suggestion of Supreme Court Justice James A. Yates, we reconsidered our suggestion and now propose that the appeal be from the trial judge to the Appellate Division. There are other instances in which the Appellate Division immediately acts on appeals and we suggest that be the case here.

We strongly recommend that the review not be based on an abuse of discretion standard, but rather, on a *de novo* standard. The appeal should be more than simply pro forma, and the Appellate Division should carefully weigh the factors raised by the appellant.

We also propose that there be a stay of the trial pending the outcome of the appeal so that the appeal of the granting of cameras in the court not be rendered moot with the

trial proceeding before the appeal is determined.

PROTECTION OF WITNESSES

We recommend that non-party witnesses be permitted to have their faces covered by a so-called "mosaic" or otherwise have their faces obscured and voices distorted simply upon request with no requirement of a good cause showing. The mosaic should provide witnesses with a sense of assurance and given the notice required, the lawyer will have more time to explain to the witness the fact that face or voice distortion is available so his or her identity cannot be determined.

If the mosaic is not sufficient, then the witness, even after the decision has been made to permit cameras, should also be permitted to not have their testimony shown based upon a good cause showing which would include fear, physical harm, damage to reputation and other similar factors.

With regard to the defendant in a criminal case, the Committee is of the view that the broadcaster should be permitted to show the defendant at counsel table because the defendant's reaction is a part of the trial. We see no difference between advising clients how to conduct themselves in front of a jury when there are no cameras and how to conduct themselves when there are cameras. However, the Committee was of the view that the defendant should be able to prevent being televised if he or she could make a good cause showing.

Similarly, the Committee recommends that if a defendant appears as a witness, he or she can prevent being televised for good cause just as can a witness.

We have reviewed some of the comments to the effect that the non-party witness should not have the automatic right to have their face covered and voice obscured, but

believe concerns about witnesses must be allayed and we decline to change our position.

PROTECTIONS FOR SEXUAL ASSAULT AND DOMESTIC VIOLENCE VICTIMS

The Committee heard testimony from victims' rights advocates, prosecutors and judges that audio/visual coverage is an additional impediment to, and disincentive for, women and men pursuing legal remedies for sexual assault and battering. (See, e.g., Testimony of Justice Leslie Crocker Snyder, Jean Walsh and Christy Gibney Carey of Safe Horizon.) Moreover, sex crime victims often feel "violated or re-victimized by the court system" and these issues are exacerbated by the presence of cameras. (Cameras in the Courtroom Committee, Minutes of Meeting, 10/26/00 at p. 230) In extreme cases, rape victims have even attempted suicide to avoid the emotional trauma and humiliation of testifying in the presence of cameras. (Cameras in the Courtroom Committee, Minutes of Meeting, 10/26/00 at p. 194)

The obvious consequence of this reluctance to testify in the presence of cameras is that crimes will go unprosecuted and women and men will be less safe in our society.

While previous New York law did not exclude sexual assault cases from camera coverage, it did provide a safeguard for the privacy of the complaining witness by excluding audio/visual coverage of the victim without her or his consent. However, domestic violence victims are not similarly protected. A survey of other state statutes reveals that of the 33 states that permit camera coverage of criminal trials, five exclude televised coverage of sex crimes and three have express exclusions of domestic violence cases. There are six additional states which prohibit filming of the victims of sexual assault.

Because of the graphic nature of the testimony and the fact that bruises and injuries to private parts of the body are exposed, the Committee believes that audio/visual

coverage of sex crimes and domestic violence cases would have a particularly chilling effect and would only serve to re-victimize an already traumatized victim.

Recognizing that there may be situations where the prosecutor's interest in advocating for or against televised coverage will sometimes conflict with the interests of victims or witnesses in such cases and prevent the prosecutor from vigorously advocating a victim's point of view, the Committee recommends that the victim be consulted by the court concerning the scope of coverage and that they be given absolute veto power. If the victim elects to permit audio/visual coverage, he or she may request that the trial be conducted in a manner that will protect his or her identity and all such requests shall be honored by the court.

In conclusion, the Committee concurs with victim's rights advocates that the "efficacy of audio/visual coverage of court proceedings must consistently be guarded against the backdrop of victims, witnesses and family members who participate in the prosecution of the case." (Cameras in the Courtroom Committee, Minutes of Meeting, 10/26/00, at p. 231) Sex offense and family offense victims are particularly vulnerable to the adverse effects of media coverage and should have a greater control over the extent of their public exposure. Accordingly, there should be a presumption against audio/visual coverage of all sex offense cases as defined in the Criminal Procedure Law and all cases involving allegations of domestic violence as defined in Section 459-a of the Social Services Law and Article 530 of the Criminal Procedure Law.

SAFEGUARDS FOR CHILDREN

One of the Committee's primary concerns is the protection of children who are either witnesses themselves or whose parents are adversaries in a judicial proceeding. Such

proceedings would include matrimonial actions, custody and visitation proceedings, child abuse and neglect proceedings, paternity proceedings and family offense cases. The Committee believes that the effect on children of allowing such disputes between their parents to be broadcast on the evening news where they can be viewed by the children themselves, their neighbors, friends or schoolmates can be devastating.

Unlike the 18 states that specifically exempt juvenile and/or matrimonial proceedings from audio/visual coverage, previous New York law did not ban camera coverage of domestic relations matters or other cases involving children. Former Section 218 simply directs the trial judge in cases involving "lewd and scandalous matters" to prohibit audio/visual coverage where "necessary to preserve the welfare of a minor." Given the unique sensitivity of cases involving children, the Committee does not believe that a standard which leaves absolute discretion in the trial judge provides adequate protection.

In reaching its conclusion, the Committee consulted with, and was guided by, the recommendations of the Committee on Children and the Law. The Committee seeks an absolute prohibition on audio/visual coverage of any child and the further prohibition on coverage of all cases involving children, unless the court finds that the benefits to the public of audio/visual coverage substantially outweigh the risks presented by such coverage.

The Children in the Law Committee was not opposed to opening Family Court to the public but "believes that allowing cameras in the courtroom poses greater risks to children."

We agree that it is essential to protect the privacy and identity of children in such proceedings and, accordingly, recommend that cameras be entirely prohibited in Family

Court proceedings. "A more restrictive access standard for cameras is justified by the nature of the access sought and heightened privacy interest in family law matters. Audio/visual coverage is particularly intrusive and intimidating. Moreover, visual imagery has a greater potential to distort, especially when the images are chosen primarily for their salacious value." (Dec. 5, 2000 letter from John E. Carter, Jr., chair, Committee on Children and the Law).

Although the Committee does not recommend an absolute ban on audio/visual coverage of matrimonial proceedings in Supreme Court, it does believe that there should be a presumption against camera coverage in such cases, with discretion in the trial judge, after consultation with the parties and the law guardian.

The Committee recognizes that although public scrutiny plays a significant role in ensuring the integrity of the judicial system, that goal can only be achieved if the manner in which judicial proceedings are made public carefully balances the rights and interests of all persons concerned, particularly the most vulnerable members of our society - our children.

We reviewed the letter from Hon. Eugene E. Peckham, Surrogate of Broome County. The concerns he has regarding children are already covered in the protection. The remaining concerns regarding the sensitivity of matters in Surrogate's Court and in Mental Hygiene hearings can be readily dealt with under the application of the standards which we propose. The standards specifically provide that the court should take into account the nature of the case and the privacy rights of all participants. Therefore, under both those standards, the judge could decline to permit cameras. On the other hand, there may be cases in Surrogate's Court which can be broadcast without an effect on the parties'

privacy interest which are also in the public interest. We, therefore, decline to have a blanket prohibition in Surrogate's Court.

PROTECTION OF IDENTITY OF JURORS

We would continue the limitation of Section 218 that there be no audio/visual coverage of jury selection. We also recommend continuing the protection of Section 218 which provided that there would be no audio/visual coverage of the jury in the jury box, in the courtroom, in the jury deliberation room, during recess or while going to or from the deliberation room. We would also extend the rule to require that there be no audio/visual coverage of jurors at any time anywhere during the course of the trial in which the juror is identified as such. We recommend that the trial judge consider the violation of the rule as a basis for terminating further camera coverage.

GENERAL LIMITATION OF COVERAGE OF SIDE BAR CONFERENCES

We recommend that the rule provide that there be no coverage of any aspect of the trial which the jury does not actually see. This would include side bar conferences, and most importantly, arguments on the admissibility of evidence so that a juror cannot be informed of excluded evidence by someone else watching the trial. The reason we are recommending cameras in the court is to educate the public as to what a jury sees and how it reaches its conclusions. Whatever educational value which might flow from televising evidentiary arguments or motions is outweighed by the potential harm to the trial.

DURATION

We recommend that the proposals of the Committee be adopted on an experimental basis. There are new provisions in our proposal and we recommend that cameras be returned on an experimental basis so that the results can be reviewed later.

During the experimental period, we also believe that there should be a method established for capturing specific instances of problems created by cameras. We should not wait for surveys later, but rather the criminal defense bar in particular should be given the opportunity to immediately report specific problems they have found with cameras so at the end of the two year period, those specific problems can be reviewed rather than simply depending on surveys.

THE STATE BAR'S ROLE: EDUCATION

We believe that the State Bar must play an active role in informing the media and the courts as to their obligations under whatever ultimate proposal is adopted. As a part of that effort, we recommend that sufficient funding be made available to the Committee on Public Relations so that it can revise the educational videotape it produced in 1990, "Assignment: Courthouse" narrated by Walter Cronkite.

This 30-minute program was originally disseminated and widely used by radio and TV news producers and reporters. It was provided to broadcast journalism departments in schools and colleges throughout the state to train future generations of broadcast journalists.

If legislation is passed authorizing a new experiment or, in the event the Legislature makes permanent a rule to permit cameras in the courtroom, this tape can be a useful resource.

THE OFFICE OF COURT ADMINISTRATION

By vesting discretion in the judiciary in deciding whether or not to permit applications for audiovisual coverage, there is a concomitant responsibility on the part of the judiciary to be fully conversant with Section 218 of the Judiciary Law.

The Committee concurs with a recommendation made by the Feerick Committee in its April 1997 report: "The Office of Court Administration should develop an enhanced judicial training program to familiarize all judges with the applicable statutory and administrative provisions and safeguards."

The Feerick Committee noted that:

"...it is essential that judges be familiar with the safeguards contained in Section 218 of the Judiciary Law and in the implementing rules promulgated by the Chief Administrative Judge. We recommend that OCA develop a judicial training program for all judges, including town and village judges, to ensure that the entire judiciary of the state is familiar with the safeguards contained in the statute and the rules which are designed to provide judges with wide discretion and to protect parties, witnesses, jurors, crime victims and other trial participants."

[See Appendix H for a copy of the rules]

We believe that the model syllabus prepared by the Feerick Committee provides a useful starting point for the development of an educational guide for judges to use in the informed exercise of their statutory discretion. The syllabus calls for "using selected readings, lectures, simulations and round table discussions with lawyers and judges who have firsthand experience with televised trials, as well as witnesses, journalists, and media scholars" (See Appendix I).

We recommend that OCA work closely with the relevant committees of the Bar Association, including the Criminal Justice Section, to develop additional appropriate materials consistent with the rules ultimately adopted on cameras in the court.

CONCLUSION

The purposes of the State Bar include, among others: promoting reform in the law, facilitating the administration of justice, and applying its knowledge and experience to promote the public good. The New York State Bar Association has long served a dual role as advocate for the profession and for the administration of justice. We believe that returning cameras to the courts of this state, with carefully prepared safeguards, best serves the Association's historic purpose.

CONCURRENCE

by Mark C. Zauderer, Esq.

I support the thoughtful recommendations of our Committee and applaud its success in formulating sound proposals for audio/visual coverage in the courts. However, the thorough process by which our Chair guided our study and deliberations has left me with some thoughts that I wished to express, but did not want to impose upon our collective product.

First, as our Report notes, we have proceeded on the assumption that there is no First Amendment right that mandates audio/visual television coverage. Indeed, the Appellate Division has declined to hold unconstitutional Section 52 of the Civil Rights Law, which prohibits television coverage of trials. Therefore, we had no occasion to consider whether the First Amendment is, or should be, applicable, or if it were, the extent to which the restrictions we endorse on audio/visual coverage would impermissibly burden the exercise of First Amendment rights.

A significant feature that emerged in our discussions is that on the issue of coverage of criminal trials, there is no ideological fault line that separates the prosecution from the defense. While some of the most vocal opposition to audio/visual coverage has come from experienced criminal defense counsel, our study did not encounter a clamoring for audio/visual coverage among prosecutors (although some support it). Indeed, I found particularly persuasive the comments of Ms. Jean Walsh, a career state and Federal prosecutor, who appeared before our Committee to express great concern with the difficulty prosecutors face in seeking to persuade witnesses or crime victims to testify against defendants, for fear of public identification. See minutes, 10/26/00, pp. 185, et seq.

With only anecdotal evidence, I am unable to make an independent judgment of how widespread this concern is among prosecutors. I simply note that in making our recommendations, we are not called upon to resolve the sometimes unresolvable tension between the perceptions of prosecutors and defense lawyers as to what constitutes the neutral administration of justice.

Finally, while I believe our recommendations strike a fair balance of the competing interests that our Committee identifies, we must recognize that we are making a significant departure from our prior position that no coverage should be permitted without consent. It is only our detailed and carefully spelled-out guidelines -- which our Committee proposes to inform the judges in the exercise of their discretion -- that give me comfort that we have not proceeded too far or too fast. We must also acknowledge that practically every credible argument in favor of audio/visual coverage has an equally plausible argument that can be advanced in opposition. Of all these rejoinders, the one that is most troubling is that there is substantial evidence that in many cases, the presence of audio/visual coverage has an effect on jurors and judges. This is an observation cogently made by others who have considered this issue. See, Minority Report of the Committee on Audio-Visual Coverage of Court Proceedings (December, 1994), pp. 39-49; Minority Report of New York State Committee to Review Audiovisual Coverage of Court Proceedings (April, 1997), pp. 15-16.

Our Committee's interviews with attorneys who have handled cases covered by the media were not inconsistent with this observation. I find it too facile an answer to argue that in most cases there is only little, or temporary, effect of television coverage. The trial of a criminal case is already an imperfect process, and any additional burden on our

attempts to achieve fairness ought not lightly be tolerated. Moreover, I find it unpersuasive that there have been no reversals of criminal convictions based on the effect of audio-visual coverage. As we learned in our Committee interviews, there are many tactical decisions that parties and their counsel must make that, by their nature, are not subject to evaluation by the trial judge, let alone appellate review.¹

In the end, it is only the specific and detailed catalog of considerations which we include in our report that gives me confidence in our recommendations. If only lip service is paid to these requirements, or if they are seriously weakened, I fear that we will lend our imprimatur to, and thereby legitimize, television coverage virtually "on demand" without ensuring the integrity of the process that our Committee believes is required in every case: a process that ensures that decisions on television coverage be carefully made on a case-by-case basis.

Particularly critical to our recommendation are the requirements that there be no presumption for or against coverage; that specific findings be made on the record; and that *de novo* review by the Appellate Division be available. In placing in the hands of the Judiciary the decision as to whether to permit coverage in each case, we ask it to shoulder not only a burden but a heavy responsibility. It is only through thoughtful and careful judicial examination -- which is particularly critical in high-profile cases, when the pressure for media coverage, however legitimate, is palpably present -- that we can ensure that our trial process remains as far as possible.

¹The problem of unavailable or unwilling witnesses was frequently alluded to by prosecution and defense lawyers as a problem which inheres in having cameras in the courtroom. Lawyers either cannot or will not reveal their strategy to the trial judge in a way that permits the latter to make a meaningful evaluation of the effect of cameras on a witnesses' testimony or availability.

CONCURRENCE

by Stephanie S. Abrutyn, Esq.

I write separately to emphasize my grave concerns about a number of the recommendations proposed by the Committee, which are, in my view, unwise, impractical, and in at least one case, unconstitutional. However, flawed as they are, the Committee's recommendations are a significant and substantial improvement over the current state of New York law, and therefore I have chosen to express my views as a concurrence.

* * *

As Justice Harlan foreshadowed, in the 36 years since *Estes v. Texas*, technological advances have rendered moot the basis for the Supreme Court's conclusion in that case that televising a criminal trial violated a defendant's sixth amendment rights.¹ In the intervening years, the Supreme Court also has explicitly acknowledged the constitutional right of access to court proceedings.² At the same time, the practical realities of modern life have eliminated the ability of most citizens to witness the proceedings in person and transformed television into the primary conduit for information about the workings of the justice system. I therefore am confident that when the Court of Appeals ultimately considers the question, it will find, as Judge Teresi did, that § 52 of the Civil Rights Law violates both the United States and New York Constitutions.

¹ See 381 U.S. 532, 595-96 (1965) (Harlan, J.) ("If and when that day arrives [that television can be present without disparaging the judicial process] the constitutional judgment called for now would of course be subject to re-examination.");

² See *Globe Newspaper v. Superior Court*, 457 U.S. 596 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).

However, in recognition of the fact that television cameras in New York courtrooms may not become commonplace without further legislation, and given the important values served and benefits brought by their presence, I concur with the majority's conclusion that the NYSBA should support and work towards returning cameras to the courts of this State.

I differ with the majority because its recommendations do not go far enough. There should be a presumption in favor of audio-visual coverage in New York courtrooms, one which can be overcome only by a showing that circumstances exist that would make media coverage "qualitatively different from other types of news coverage and that make such coverage undesirable."³ Absent such a presumption, in cases where cameras are permitted, only upon a finding of good cause by the presiding judge should there be restrictions that prevent audio-visual coverage of any proceedings that are open to the public and can be observed by someone sitting in the gallery of the courtroom.

A. Despite all of the differences on the underlying issue, no one disputes that the vast majority of the citizens of this State rely on television as their primary, if not only, source of news and information. "[T]he institutional press . . . serves as the 'agent' of interested citizens, and funnels information about trials to a large number of individuals."⁴ Audio-visual coverage of trials simply allows the media to fulfill this responsibility more effectively. As we recently have observed in the case of the police officers charged in the Diallo shooting and the multitude of legal proceedings in Florida surrounding the 2000 election for president of the United States, television cameras in the

³ *In re Petition of Post Newsweek Stations*, 370 So.2d 764 (Fla. 1979).

⁴ *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 586 n. 1 (Brennan, J., concurring) (1980).

courtroom provide the public with substantive access to the proceedings that cannot be equaled by traditional reporting.

These experiences, the experiences of every jurisdiction in the nation that permit audio-visual coverage of courts, and our Committee's independent interviews with attorneys who have actual experience with cameras during trials consistently reveal that the potential harms and adverse effects feared by opponents of audio-visual coverage simply do not materialize. Technology has eliminated concerns about disruption of the proceedings themselves by the physical presence of television cameras. Small, silent cameras which do not need additional lighting are available and are used all over the country.

Similarly, the feared effects on the ability of a criminal defendant to obtain a fair trial with the presence of cameras are belied by the hundreds of cases all over the United States that have been televised.⁵ Moreover, in revisiting the issue through our own interviews with attorneys who have experienced cameras, in the words of the majority of the Committee, "there was no such pattern [of adverse results] or recurring instances of problems which affected the outcome of trials."⁶

In large part because of the media's role as a surrogate for the public, high-profile, sensational trials will be covered by the news media whether or not television cameras are permitted in the courtroom itself.⁷ As a result, it is important to keep in mind that

⁵ Courtroom Television, Inc., operator of the cable television station known as CourtTV, provided the Committee with a list of 729 trials around the United States which it has covered, in whole or in part, without a single instance of material prejudice to a participant.

⁶ See Preliminary Report of Special Committee on Cameras in the Courtroom ("Majority Report") at 10.

⁷ Indeed, § 52 does not prohibit still cameras.

criticism and concerns about the news media, or so-called "sound-bites," cannot be minimized or addressed by keeping cameras out of New York courtrooms.

If television cameras are not in the courtroom, they will be outside the courtroom, on the courthouse steps, around the building, and anyplace else they might find the participants. The public will be far better informed by seeing excerpts from the trial itself, versus hearing a television reporter's courthouse-steps interpretation of what happened. The Diallo case is illustrative, for there is no question that the public's understanding of the verdict was significantly enhanced by witnessing, through television, the police officers' testimony. Having a journalist merely report that the testimony was "emotional" could not possibly match the effect of seeing an officer crying on the witness stand, even if it was just a 10-second "sound-bite." Similarly, once the television news is covering a case, it will show videotape of the defendant. If the camera is permitted in the courtroom, it will likely be film of the defendant, in a suit, standing or sitting at counsel table. If a camera is not in the courtroom, the commonly available videotape of the defendant being stuffed into a police car in handcuffs will, in the words of WNBC-TV news director Phillip O'Brien, become "wallpaper," and appear repeatedly in every news report on the case.⁵

Challenges exist for the attorney in any case. And, certainly, this country's tradition of and constitutional right to open courtrooms sometimes exacerbate those challenges. Nonetheless, the founding fathers made a judgment that, absent extraordinary circumstances, the potential risks to the administration of justice in any specific case are outweighed by the overall benefit of public scrutiny of trials. More than two-hundred

⁵ See Transcript of Appearance of Philip O'Brien before the Special Committee on Cameras in The Courtroom at 43-44.

years later, the Supreme Court of the United States confirmed the continuing vitality of that principle. Unless the impact of cameras on any specific case will be demonstrably different than the impact of media and public access generally, audio-visual coverage of trials in New York should be presumed

B. Setting aside a presumption in favor of access, were the issue of whether or not there were audio-visual coverage in any specific case left to the discretion of the trial judge, some of the burdens that the majority would place on audio-visual coverage are unnecessary, counter-productive, and in some cases unconstitutional.

1. Taken in the order raised in the Majority Report, first, the recommendation that broadcasters be required to tape the entire case and file the "outtakes" with OCA is fraught with legal difficulties and reflects a lack of understanding of how broadcasters operate. Requiring a broadcaster to be present for and tape all of a trial even when, in the editorial judgment of the station, it is not warranted impinges on that station's First Amendment rights.⁹ Even were it constitutional, the NYSBA should not advocate a position that would condition audio-visual access on waiver of a fundamental right.

In addition, the economics of complying with such a requirement will discourage large stations from seeking camera access and shut out smaller stations with fewer resources. The theory behind the recommendation – that it will encourage broadcasters to use more than short clips – cannot hold up in the face of operational reality for

⁹ See *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256-258 (1974). Indeed, the Federal Communications Commission has concluded that compelling a broadcaster to cover "controversial issues of interest in the community" violates the First Amendment. See *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989) (upholding agency decision to eliminate the Fairness Doctrine without reaching constitutional issue).

television news. Programs run for a fixed period of time, and the length of the report on any specific topic or trial depends on the judgment of the news director, taking into consideration other events that must be included in the newscast. In general, the station has significantly more material for every story than makes it into the final report. As important as any single trial may be, it nonetheless will remain only one of a multitude of issues reported on any day. The availability of more video from that trial simply will not materially affect these basic facts.

On the other hand, requiring a station to devote one of a limited number of crews full-time to a trial of undetermined length – and thus making it unavailable for other events – will impose a significantly higher cost on audio-visual coverage of a trial than exists for coverage of the trial without cameras in the courtroom. As a result, this requirement likely will result in much less coverage, not extended coverage.¹⁰ That coverage, moreover, will likely be only of the most high-profile and sensational cases, because those are the only cases for which a news director will be able to spare the crew. The everyday work of lawyers and the system – which the majority notes has the most educational value – will remain unavailable for observation by most New Yorkers.

Legal concerns also exist with the majority's requirement that the "outtakes" of the trial, not just the material that has been broadcast, be deposited with OCA. This requirement directly contradicts the existing shield law, which makes such material privileged.¹¹ It also conflicts with the federal journalists privilege for the same

¹⁰ Even CourtTV, which strives to have gavel-to-gavel coverage of its cases, cannot guarantee at the outset that it will be able to do so in every case. For example, if CourtTV were televising a trial in progress when the 2000 election took place, the majority's proposal would have prevented it from terminating coverage of that trial to send the crew to Florida to cover one of the many of election cases that materialized.

¹¹ See N.Y. Civ. Rights Law §79-h.

materials.¹² Based on these privileges, journalists fervently and routinely protect broadcast outtakes from those seeking copies of them, and those privileges should not be disregarded absent compelling circumstances, which do not exist here.

2. The second point on which I disagree with the majority's proposal relates to carrying forward all of the limitations of Section 218. In particular, for the reasons that the majority pointed out, requiring consent of the parties for audio-visual coverage of any proceedings defeats the value of access.

3. The standards proposed by the majority that should guide a judge in exercising his discretion as to whether or not to permit cameras also are flawed. First, many of the concerns listed as factors to be considered can and should be addressed by alternative means available to the Court. The majority recommends, for example, consideration of the effect on the ability to select an unbiased jury in the initial case or if a mistrial is declared and the potential effect on subsequent proceedings. Any of these effects can adequately be addressed through exacting and efficient voir dire. Consideration of the "[e]ffect on excluded witnesses who should have access to the televised testimony of prior witnesses" falls into the same category. Judges routinely deal with the potentially prejudicial effects of publicity by instructing witnesses not to read or watch news coverage of the trial. Given the availability of alternatives that would not deprive citizens of effective access to the proceedings, these factors should only be considered if the judge has determined that the concerns cannot be addressed in any other manner.

¹² See *Gonzalez v. National Broadcasting Company, Inc.*, 194 F.3d 29 (2d Cir. 1998).

Second, listing some of the requirements without any further elucidation as to how they should be considered risks unintended and troubling results. As the Majority Report amply sets forth, party consent should not be required. Yet, the majority then suggests that “[p]arties support of or opposition to the request” should be considered by the Court in exercising its discretion. Inclusion of this factor is inherently contradictory and ultimately could indirectly impose a consent requirement on any request.

Similarly, the majority recommends that a court consider the “privacy rights” of participants in the proceeding. There is, however, no question that the proceeding itself must be open to the public and that whether or not cameras are present, anything that occurs may be reported. In essence, therefore, no “right” of privacy exists for participants in a public court proceeding.

4. The next point on which I differ with the majority relates to the witness “veto.” Requiring a broadcaster to visually obscure the image of any witness who so requests, without a showing of good cause, is unnecessary and serves to undermine the purpose and value of allowing coverage in the first place. Audio-visual coverage of trials like the Diallo case serve a significant educational purpose, in part, because viewers will be able to better understand how a jury reached its decision. In any trial, of course, the factfinder’s decision often rests on credibility determinations from intangible factors such as witness demeanor, tone of voice, and the like. Individual witnesses alone should not possess the power to undermine that purpose. Instead, only upon a showing of good cause should a witness be obscured, and only upon a showing of good cause that obfuscation will not be sufficient should audio-visual coverage of a particular witness’

testimony be prohibited. The ability of the presiding trial judge to make such a finding eliminates virtually all potential adverse effects from the presence of cameras.

Further, it should be made clear that "good cause" must be based on factual findings that specific harm "qualitatively different from other types of news coverage"¹³ is likely to result from effective audio-visual coverage. Examples would include, of course, when there is a credible risk to a witness' safety, such as in the case of undercover police officers. The probable harm to a child witness or victim in a sex offense or domestic violence case from having his or her image on television would be another. Only in these limited circumstances, where the presiding judge has determined that audio-visual coverage in fact will impede the administration of justice, should a witness be obfuscated.¹⁴

5. Finally, the majority's recommendation that there be no coverage of any aspect of the trial which the jury does not actually see further undermines the positive benefits that will flow from camera coverage of proceedings. If a hearing takes place in open court outside the presence of the jury, where reporters can sit in the courtroom, listen, and then report on it, there is no reason to bar cameras, and the Majority Report offers none. Allowing the public to see all aspects of the proceedings will better educate them about the legal process and how a judge reached his or her decision. In trials where cameras are present, any proceedings that are open to the public and can be observed by

¹³ *In re Petition of Post Newsweek Stations*, 370 So.2d 764 (Fla. 1979).

¹⁴ While sexual assault and domestic violence cases raise special concerns that warrant careful consideration, they also deal with matters of significant public interest. Therefore, the trial judge should be left with the responsibility of determining where the balance falls in any given case for any specific witness.

someone sitting in the gallery of the courtroom should be available for audio-video coverage.

* * *

For these reasons, I urge that there be a presumption in favor of audio-visual coverage, one which can be overcome only by a showing that circumstances exist that would make audio-visual coverage "qualitatively different from other types of news coverage."¹⁵ Absent such a presumption, the trial judge, rather than the parties or a witness, should be the ultimate arbiter of whether or not specific trials and specific testimony within those trials be subject to coverage.

¹⁵ *In re Petition of Post-Newsweek Stations*, 370 So.2d 764 (Fla. 1979).

DISSENT

TO: A. Vincent Buzard, Chair
NYSBA Special Committee on Cameras in the Courtroom

FROM: Leroy Wilson, Jr., Esq.



DATE: February 23, 2001

I respectfully dissent from the majority report to the extent that it does not condition television access to the courtroom on the consent of witnesses, including a party, as discussed below.

I am generally in favor of cameras in the courtroom. I am constrained in my views by the individual in the chair whose life or liberty is in jeopardy at the criminal trial. I believe that the right to a fair trial supercedes any assumed "right of the public to know" what happens at trial by way of television. The individual defendant in a criminal case has more to lose, and therefore, more to say, than any other person. That individual should, therefore, have the right to say whether he or she wishes to put in jeopardy her presumption of innocence by having witnesses testify who may appear to be less than truthful for all the reasons Martin Adelman, Esq., gives in his separate dissent. The presumption of innocence is the bedrock of our criminal justice system, even as it slowly erodes away.

In all cases, criminal and civil, all witnesses including a party, should have an absolute veto over whether or not they will be televised in the courtroom.

Almost 100 years ago, Francis L. Wellman described the lot of the witness:

Of all unfortunate people in this world, none are more entitled to sympathy and commiseration than those whom circumstances oblige to appear upon the witness stand in court. You are called to the stand and place your hand upon a copy of the Scriptures in sheepskin binding, with a cross on the one side and none on the other, to accommodate either variety of the Christian faith. You are then arraigned before two legal gentlemen, one of whom smiles at you blandly because you are on his side, the other eyeing you savagely for the opposite reason. The gentleman who smiles, proceeds to pump you of all you know; and having squeezed all he wants out of you, hands you over to the other, who proceeds to show you that you are entirely mistaken in all your supposition; that you never saw anything you have sworn to; that you never saw the defendant in your life; in short, that you have committed direct perjury. He wants to know if you have ever been in state prison, and takes your denial with the air of a man who thinks you ought to have been there, asking all the questions over again in different ways; and tells you with an awe inspiring severity, to be very careful what you say. He wants to know if he understood you to say so and so, and also wants to know whether you meant something else. Having bullied and scared you out of your

wits, and convicted you in the eye of the jury of prevarication, he lets you go. By and by everybody you have fallen out with is put on the stand to swear that you are the biggest scoundrel they ever knew, and not to be believed under oath. Then the opposing counsel, in summing up, paints your moral photograph to the jury as a character fit to be handed down to time as the typification of infamy--as a man who has conspired against innocence and virtue, and stands convicted of the attempt. The judge in his charge tells the jury if they believe your testimony, etc., indicating that there is even a *judicial* doubt of your veracity; and you go home to your wife and family, neighbors and acquaintances, a suspected man--all because of your accidental presence on an unfortunate occasion!¹

Any witness should have the absolute right to prohibit this experience from being compounded by televising it for all the world to see.

¹ Francis L. Wellman, *The Art of Cross-Examination at 194-195* (4th Ed., revised and enlarged, first Collier Books Edition, 1962)

NEW YORK STATE BAR ASSOCIATION

**Special Committee on
Cameras in the Courtroom**

**DISSENT FILED WITH THE
HOUSE OF DELEGATES**

Martin B. Adelman

March 1, 2001

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INTRODUCTION

This dissent is respectfully filed, with admiration for the leadership of our Chair and appreciation for our Special Committee's commitment to civil discourse and collegiality. We disagree on one narrow issue - not on whether the courts generally should be open to cameras - but only on whether the parties' counsels' consent should be required. As the only criminal law practitioner on the committee, perhaps I have a heightened sensitivity to fair trial concerns in criminal cases - and suggest that it is entirely appropriate.

It should be immediately recognized that the Majority Report urges an abrupt shift from the most recent House of Delegates' position, that consent should be required. Camera proponents argue that unrestricted television access would improve the public's perceptions of the justice system and its participants, particularly the legal profession. In fact, in the past decade, there were a half-dozen "notorious" televised trials which did nothing to enhance the public's respect for the justice system and its participants.

That an "average person", as a potential witness, may fear television exposure, and may be lost to the fact-finder, or perceived as less credible, was confirmed by our Special Committee's research and in all prior studies. This dissent argues that counsel is the best informed decision-maker regarding witnesses' concerns and what will allay them, and does not address additional negative effects which cameras can visit on a trial - on jurors, the judge, and witnesses more anxious to testify for opportune gain, or "contaminated" by monitoring the trial before testifying. This dissent respectfully suggests that the House of Delegates reaffirm its present position that consent be required, as striking the proper balance between the media's interest in televising a case and society's interest in a fair trial and its just result.

THE IMPETUS FOR RE-EXAMINATION

The Majority Report cites (p. 4) Judge Joseph Teresi's decision allowing broadcasting of People v. Boss et al. (trial of police officers indicted in the shooting death of Amadou Diallo), as well as the televised Florida court contest over the recent Presidential election, to illustrate "that the issue of cameras in the courts has gone from dormant to active."

This "active phase" on the issue of cameras in the courts is not the product of public clamor for more televised trials from New York's courts. In fact, two relatively recent polls of New Yorkers show just the opposite. During last year's Boss trial, the Quinnipiac Polling Institute reported (NYLJ 2/16/00, p.1, col. 3) that the public was then evenly split on cameras in the courts, at a time when many of the poll's subjects were watching the televised Boss trial. A few years earlier, the Marist Institute did a similar survey - when no highly publicized case was being broadcast - and found that 61% of the general public thought that television coverage of trials a "bad idea", while 35% said it was a "good idea." (see below for more detail).

The diminished public appetite for trial coverage is also reflected in Court TV's shift in programming, from its original "all trials, gavel-to gavel" coverage, to currently broadcasting edited portions of trials during the day, and syndicated re-runs of crime shows (e.g. "Homicide" and "Profiler") during prime-time evening hours. The networks will mainly cover "ideal cases", with the potential for a national or high-rating local audience, and the prototypical case appears to be the criminal trial of a celebrity or professional athlete, often a person of color, facing the death penalty.

Obviously, “the media” - conglomerates in which television and radio stations as well as print outlets all contribute to the bottom line - continues to urge virtually unrestricted camera access to the courts. Clearly, it furthers the media’s economic interest to obtain totally free programming, in “studios” paid for by the state with conscripted “actors”, to attract viewers and advertisers.

The point here is that there simply is no public pleading, much less wide-spread support, for re-institution of camera coverage in New York’s trial courts. To say that is not to dispute the good faith of the Majority Report, but to question its basic premise, which rests purely on an optimistic presumption - that more televised trials will bring heightened respect for the judicial system and the legal profession. This faith discounts logic and ignores the proof to the contrary.

Having made these initial observations, we will first review the record of prior House of Delegates’ positions on the issue. Next we discuss the established fact that witnesses have serious hesitations about confronting cameras while testifying, and the potential for negative impact on the fair administration of justice. Then we respond to the proponents’ contention that more camera coverage will increase public respect for the justice system and the legal profession. Lastly, we turn to this dissent’s proposal, which is re-affirm the current House of Delegates position - to approve permanent camera access, but on condition that all parties’ counsel consent.

Thus, let us first turn to the record of our Association’s prior positions on cameras in the courts.

THE STATE BAR RECORD

Our House of Delegates' most recent resolution, in 1994, approved legislation to permit permanent camera access to the Courts, conditioned on party consent. The history is recounted in the State Bar staff's memo to the House of Delegates (Agenda Item 8, January, 2001, Tab A):

Over the past 21 years, the House of Delegates has been on record in favor of experimentation with camera coverage of civil and criminal trials with the exception of 1979. At various times throughout the experimental periods authorized by the Legislature and covering the years 1979, 1980, 1987, 1989, 1991 and 1994, the Association's position toward audio-visual coverage of court proceedings has supported either existing legislation to continue the experiment with safeguards (i.e., the consent of both parties) or opposition (1979). In June, 1994, the House voted to endorse permanency for media coverage of trials, with the provision that counsel for all parties consent to coverage.

Thus, the position of this dissent is not a "cry in the wilderness", but is consistent with the previous State Bar record. We turn now to the facts developed before the Special Committee, first on the negative experiences during the prior experimental periods in New York.

CAMERA'S EFFECT ON FAIR TRIAL -- SURVEY, POLLS AND INTERVIEWS

The Special Committee collected 45 questionnaires from lawyers and judges on their experiences with witnesses facing televised trials, and spent one day hearing testimony. The responses were not as reassuring as the Majority Report (p. 11) conveys ("The results of the interviews was that the projected harms and what-ifs of cameras in the courtroom simply were not realized. There was no pattern of difficulty which would outweigh the benefits of cameras in the court.")

The reality is that even in this limited sample before our Special Committee, there were disturbing reports that television coverage had adversely affected witnesses. “We as lawyers know when a problem has affected the outcome of a trial . . .”, the Majority Report says (pp. 11-12). In that light, consider these summaries and direct quotes from five of the thirty-odd attorney questionnaires we received:

Questionnaires - Effect on Witness Demeanor

- An Ithaca attorney, who tried five televised cases had “several instances where witnesses expressed reluctance to testify in the presence of cameras, both prosecution witnesses and defense witnesses.” Although the Court granted a “blue dot” to obscure the face, several defense witnesses “seemed to be wary of and uneasy about the presence of the television cameras, often looking in their direction as they gave testimony. This did not help their demeanor.”

Witnesses testifying with cameras present “are reluctant to ask the Court to interrupt coverage (e.g., for a bathroom break) or become difficult to question when they actually get on the stand. In addition, it necessarily takes time, most often at a premium during trial, to cajole and otherwise reassure the reluctant witnesses.” (Special Committee’s Interview Compilation, pp. 22-24).

- A Suffolk County practitioner who tried a televised “notorious murder case” mirrored these concerns. “[M]any of the witnesses were reluctant to come forward. They became more nervous because of the cameras, and preparing them as witnesses became more difficult” as “there were personal matters regarding the personal lives of witnesses and their relationships which was brought out during the course of the trial.” When the attorney was asked “how did you handle it”, the reply was “there was nothing I could do.” (*Id.*, pp. 80-81).
- An Erie County Assistant District Attorney who tried multiple homicide televised trials stated “in almost every case, at least one witness did object, nearly always the family of the victim and frequently eyewitnesses . . . although [the prosecutor] would explain that even without cameras, print media might report testimony, [their] objection was to broadcasting [their] face” and “many witnesses who did object would refuse to testify if there were cameras.”

This A.D.A said "if a witness has a fear or does not want to be filmed, the presence of cameras would significantly impair [the] testimony and credibility of the witness, who would be too nervous to testify effectively." "Witnesses are aware of the print media but distinguish the additional presence of cameras" and "most witnesses are most nervous about confronting defendants, if they had to deal with cameras, [it] would probably damage their testimony." (*Id.*, 146-148).

- A Rochester defense attorney with several multiple homicide televised trials agreed that "witnesses see the print media and cameras differently, I can't persuade them that there is no distinction." This attorney has seen cameras "impact the case, usually the prosecution's case, because the witness is not as credible or seems more guarded." (*Id.*, 148-149).

Questionnaires - Witnesses Refusing to Testify

- An Albany public defender reported that in two televised trials, both prosecution and defense witnesses refused to testify in the cameras' presence, and specifically that two defense witnesses were lost in one of the cases. (*Id.*, p. 142).
- The chief public defender in Rochester, whose office had several televised trials, reported that a witness was lost in one case, he believes, because of cameras. (*Id.*, p. 3).

Testimony - Detailed Accounts

The Special Committee heard eight witnesses - attorneys, judges and a crime victim counselor - which provided far more detail than elicited by the questionnaires. One was a career New York City prosecutor, in both the State and Federal Courts, whose comments were termed "particularly persuasive" in Committee Member Mark Zauderer's concurrence (Majority Report, p. 31).

This prosecutor emphasized (minutes of 10/26/000, pp. 185 *et seq.*) that even the mention of television's presence at an up-coming trial, well before any judge's ruling, can trigger a reluctant witness's flight, and how the actual experience of testifying before cameras can affect the witness and the jury's assessment of that witness's credibility. In several high-profile cases - serial rapists and murderers, career victimizers of senior citizens, a RICO case with drug murders and gang violence - this prosecutor found that "media coverage became a constant problem."

In one homicide case a witness who was threatened by defendant's gang associates was relocated twice within New York, and then to another state. Informed that television expressed an interest in televising the trial, he replied "You will no longer speak to me, I will move, I will change my phone, and I will change my name."

The witness was found and prosecutors promised they would "try to keep the cameras off his face and try to keep whatever media coverage away." Despite this, the witness failed to appear, yet again was found, arrested on a material witness order and held until the trial. The witness thus was compelled to testify, but the cross-examination's focus - on his earlier refusal to appear, his material witness arrest, and his unwillingness to testify - negatively impacted on the witness's credibility.

In violent crime cases, witnesses want their identity and personal information kept secret. Even with visual and audio disguise, witnesses may fear the loss of anonymity, i.e., people in their neighborhood, industry and profession can identify them. Victims say "I didn't choose victimization or where it would happen, or my attacker, and I don't choose to be exposed."

One victim of a serial rapist feared emotional trauma, humiliation and potential job loss if cameras were present at trial. Despite sincere assurances that her testimony would not be televised, she attempted suicide, triggered in the opinion of her doctors and a social worker, by her fear of media exposure. Although the Court did ultimately bar camera coverage, this victim refused to participate in trial preparation and went "cold" onto the witness stand.

Witnesses are initially motivated by altruism, but the prospect of testifying before a camera raises fears of retribution, about safety, exposure or job loss. The witness's employer may not like "snitches", or the witness was not "with the right people" or "in the right place" (e.g., moonlighting on a second job).

In such circumstances "I had a hard time convincing them to be witnesses; I had a hard time finding them." The "higher the quality" of the witness, the greater the danger of losing them: it was professionals who most feared exposure of their past academic difficulties, drug use, or past employment problems.

A witness cannot be guaranteed that there will be no camera coverage until a judge ultimately rules, often quite close to trial. The judge making the determination does not know the derogatory information which might emerge, or necessarily understand how sensitive, frightened or fragile the witness truly is. Holding a hearing presents problems as well; the witness is hesitant to come to court or to confront the defendant, who has a right to be present, and that confrontation can present further legal problems, as in identification cases.

This prosecutor emphasized that the views expressed were her own, but believes they are shared by many trial assistants and line prosecutors, while elected District Attorneys see the political necessities of their office as requiring a public stance that "the courts should be open to all media."

A veteran Albany defense attorney shared similar experiences (*Id.*, pp. 130 *et seq.*):

"The number one fear of people is public speaking" and "fear of failing." When it comes to testifying, they don't want to appear on camera. People have a lot of reasons for not wanting to appear on camera - whether it be a fear of retaliation, of the police, or repercussions within their family - and presenting a defense with the hurdle of cameras in the court is really difficult.

This attorney experienced witnesses refusing to testify due to cameras, and believes that television affected the result of at least one case. Alibi witnesses, whom the attorney credited and had under subpoena, failed to appear, stating "I will simply refuse to get involved" if cameras are present. The attorney prepared them, urged them to "forget about the cameras", and yet they refused to appear. Asked why the same effect wasn't present with print reporters in the courtroom, the attorney opined "a camera in the courtroom changes the dynamic."

Cameras are Different

Despite the results of the questionnaire and interviews, the Majority Report discounts the effects of camera coverage on "most witnesses." But beyond the cited comments, above, common sense and life's lessons confirm that the prospect of testifying before strangers about traumatic events, and facing rigorous cross-examination ("the greatest engine to uncover the truth" in Dean Wigmore's familiar phrase) is extremely unsettling. Provision of a "blue dot" or mosaic distortion may not be sufficient solace to a witness who fears cameras and will be affected - by appearing nervous, by appearing less credible, or by not appearing at all.

Proponents argue (Majority Report, p.18) that broadcast and print journalists are at the courthouse in any high profile case and, in the words of one media representative, if cameras aren't allowed in the courtroom, they "will chase the defendant down the courthouse steps." Yet, most people believe that "cameras are different" - particularly prospective trial witnesses.

Revered Supreme Court Justices also believed that compelling witnesses to testify before cameras potentially infects the trial process. In *Estes v. Texas*, 381 US 532 (1965) the court reversed a conviction because of disruptive media practices, admittedly now outdated. Chief Justice Earl Warren prophetically observed (381 US at 569-70):

Whether they do so consciously or subconsciously, all trial participants act differently in the presence of television cameras. And, even if all participants make a conscientious and studied effort to be unaffected by the presence of television, this effort in itself prevents them from giving their full attention to their proper functions at trial. Thus, the evil of televised trials, as demonstrated by this case, lies not in the noise and appearance of the cameras, but in the trial participants' awareness that they are being televised. To the extent that television has such an inevitable impact it undercuts the reliability of the trial process.

Justice Harlan agreed (*Id.* p.591): "In the context of a trial of intense public interest, there is certainly a strong possibility that the timid or reluctant witness, for whom a court appearance even at its traditional best is a harrowing affair, will become more timid or reluctant when he finds that he will also be appearing before a 'hidden audience' of unknown but large dimensions."

The Feerick Committee's Marist Poll

In 1996, the Feerick Committee commissioned the Marist College Institute for Public Opinion, in Poughkeepsie, to seek 600 New Yorkers' views about participating in a trial with various forms of media coverage. The survey's results (*Feerick Report*, Appendix B, Tab B hereto) are consistent with the real-life experiences reflected in our questionnaires and interviews (*supra*), all other research in the area, and the opinions in *Estes*, cited above - in short, all the material before our Special Committee. Consider the questions asked and the responses:

Q6 If there were television cameras in the courtroom would you be more willing to serve on a jury, less willing, or would the cameras not make a difference?

More willing: 2% Less willing: 43% No difference: 55%

Q7 If you had a civil lawsuit, would you want the trial televised, not want it to be televised, or would it not make a difference to you?

Want it televised: 6% Not want it televised: 70% No difference: 24%

Q8 If there were television cameras in the courtroom, would you be more willing to testify as a witness in a non-criminal case, less willing or would the cameras not make any difference to you?

More willing: 3% Less willing: 45% No difference: 52%

(Asked only of those who answer "less willing" to Q8, above).

Q9 If your image was blurred so that viewers could not see your face on television, would you be more willing to testify as a witness in a non-criminal case, less willing or would the blurred image not make any difference to you?

More willing: 18% Less willing: 57% No difference: 25%

Q10 If there were only newspaper reporters, no cameras, in the courtroom, would you be more willing to testify as a witness in a non-criminal case, less willing or would the presence of newspaper reporters not make any difference to you?

More Willing: 19% Less willing: 17% No difference: 64%

Q11 If you were a defendant in a criminal case, would you want the trial to be televised, not want it to be televised, or would it not make any difference to you?

Want it televised: 6% Not want it televised: 69% No difference: 25%

Q12 If you were a crime victim, would you want the trial to be televised, not want it to be televised, or would it not make any difference to you?

Want it televised: 13% Not want it televised: 68% No difference: 19%

Q13 If there were television cameras in the courtroom, would you be more willing to testify as a witness to a crime, less willing or would the cameras not make any difference to you?

More willing: 4% Less willing: 54% No difference: 42%

(Asked only of those who answer "less willing" to Q13).

Q14 If your image was blurred so that viewers could not see your face on television, would you be more willing to testify as a witness to a crime, less willing or would the blurred image not make any difference to you?

More willing: 38% Less willing: 34% No difference: 28%

Q15 If there were only newspaper reporters, no cameras, in the courtroom, would you be more willing to testify as a witness to a crime, less willing or would the presence of newspaper reporters not make any difference on your willingness ?

More Willing: 18%

Less willing: 20%

No difference: 62%

The Roberts Committee's Survey

The Majority Report (p. 8) repeats the *Roberts Report's* conclusions, but does not review its underlying data. The Roberts Committee was weighted with members either employed in or representing the media, (as were four of the twelve members of our Special Committee); its *Report* presented the results of prior studies in a one-sided fashion - either by quoting solely the side which supported its conclusion or minimizing negative numbers by the preface "only."

The *Roberts Report* (p. 75) thus referred to a survey where: "87% percent of the judges reported that witness testimony was not affected by the presence of cameras" while "94% reported that cameras had no effect on the fairness of the proceedings." But how many thought a witness's testimony was affected, or a fair trial was compromised? Citing prosecutors and defense attorneys "62% percent noted that witness testimony was not affected by coverage, only 5% reported that a witness would not testify because of the presence of cameras. 76% reported that the coverage did not affect the fairness of the proceedings." Is this encouraging?

Consider another set of pregnant statistics from the *Roberts Report*, concerning jurors (p. 76): "85% reported being neither more reluctant nor more eager to participate because of the presence of cameras. 86% reported that the cameras had no effect on their level of attentiveness and only 5% reported feeling more tense or distracted." Are these figures acceptable?

The *Roberts Report* next discussed (p.77) a survey of trial witnesses. The results are cause for concern, not sanguine satisfaction:

A total of 64 witnesses completed evaluation forms, with only 4% comment[ing] that the presence of cameras was prejudicial. Although 29% felt tense, and 44% felt more self-conscious and 30% felt somewhat uneasy, only 10% were reluctant to participate because because of cameras, and 83% were either neutral or reported that coverage did not make testifying at all difficult. Nearly 60% of the witnesses favored camera coverage, and 90% reported that they would be willing to participate again as witnesses in a case in which cameras were present.

Lastly, the *Roberts Report* described (p. 78) another New York survey of trial witnesses, and again the bias is barely concealed: "Of the small number of witnesses who completed evaluation forms, twice as many were favorable as unfavorable. Although 27% of witnesses reported feeling anxious and nervous because of the presence of cameras, 78% were of the opinion that the coverage did not create undesirable noise and distractions." These significant percentages can be seen as a major interference with the administration of justice.

Camera Access in Other Jurisdictions

In the same manner as the Majority Report quotes from the *Roberts Report's* conclusions without discussing the underlying data, it cites other State's studies, but only those approving camera coverage. However, as its research confirms, (Majority Report, pp 11-12), fully a third of the States - seventeen - either bar camera coverage or require consent for the camera's presence.

The Federal Judicial Council sets the rule for the 100 Federal District Courts; after an experimental period of broadcasting civil trials, it voted against cameras. The Majority Report highlights (p. 6) that FJC staff urged camera access, but a key limitation thereof (p. 43, staff report) was “the research project staff recommends that the Judicial Conference authorize federal courts of appeals and district courts nationwide to provide camera access to civil proceedings in their courtrooms . . .” (emphasis added). So, until today, the Federal rule is still “no cameras.”

PROJECTED BENEFITS OF TELEVISED TRIALS

The majority “have such confidence in what we do as lawyers that we believe if the public can see what we do in the courtroom and see how jurors reach their verdicts, some of the misunderstanding of the lawyers’ role in the legal system will be removed” (Majority Report, p. 13). It explains further (*Id.*), that “because of a variety of factors over the last 20 years, including direct attacks, confidence in lawyers and our legal system has been greatly eroded.” Beyond the “direct attacks” it does not identify this “variety of factors” (but see below).

The Majority Report’s noble aspirations do not comport with reality. Considering that the decade just past was filled with high-publicity televised trials, the Majority Report’s prediction that more coverage would instill higher public “confidence in lawyers and our legal system” recalls a wry characterization of Zsa Zsa Gabor’s fifth marriage - “it is the triumph of hope over experience.” An analysis of what was actually broadcast during this past decade of televised trials perhaps reveals television coverage as the root cause of the public’s misperception of the criminal justice system and lawyers.

Federal Study of Content Analysis

It is important to examine “what television shows.” For that, this dissent appeals to “what every reader knows.” Aside from Court TV, which began with a promise of showing “what the jury sees” but suffers woefully low ratings, most network and cable television trial coverage consists of snippets and “sound bites.” In 1994, the Federal Judicial Center undertook a “content analysis” study - to determine how the evening news actually used courtroom footage and the quantity and quality of information the broadcasts conveyed. The results (Federal Judicial Center report, p. 35) were hardly surprising to those who watch television news stories:

The content analysis revealed that in news stories on covered proceedings, footage from the courtroom occupied 59% of the total air time. The ninety stories analyzed presented a total of one hour and twenty-five minutes of courtroom footage, with the average of fifty-six seconds of courtroom footage per story . . .

The analysis also examined the extent to which courtroom footage was voiced-over by a reporter’s narration. On average, reporters narrated 63% of all courtroom footage. The percentage of the story narrated by a reporter varied widely across stations and across cases covered, but it did not appear to be related to either the length of the story or the nature of the case.

The “patterns identified in the analysis” in the FJC report (*Id.* p. 36) are striking:

First, most footage was accompanied by a reporter’s narration rather than the story being told through the words and actions of the participants, thus, the visual information was typically used to reinforce a verbal presentation, rather than to add new and different material to the report. Second, plaintiffs and their attorneys received more air time than defendants and their attorneys. Third, the stories did a fairly good job at providing information to the viewer about the specific cases covered, however the amount of courtroom footage was not related to the amount of information communicated. Fourth, the coverage did a poor job in providing information to viewers about the legal process.

Thus, courtroom camera images are used mainly as “wallpaper” - silently running while a reporter-narrator states authoritatively “this is what happened in Court today” - with a snippet of testimony from a witness. As for its educational value, to reiterate “the coverage did a poor job to providing information to viewers about the legal process.” These are the “hard facts” of what television coverage really brings to public understanding - and the public knows it.

The ‘Age of TV Trials’ - The 1990’s Analyzed

The past decade saw a half-dozen nationally televised criminal “trials of the century” : the prosecutions of William Kennedy Smith (1991), police officers in the Rodney King beating (State trial - 1992), Lyle and Erik Menendez (1993), O.J. Simpson (criminal and civil trials - 1995 and 1997), Louise Woodward (1997), and police officers in the Amadou Diallo shooting (2000).

Did televising these trials bring to the public a “quiet confidence” in their results, in the judicial system generally or in the legal profession? Rioting followed the officers’ acquittal in the Rodney King State prosecution, and faith in the acquittals of O.J. Simpson and the officers in the Amadou Diallo shooting splits along racial fault lines. “Seeing is believing” apparently still depends on the life experiences of the viewer.

The overall effect of televising these trials on public confidence in the criminal justice system’s components - police, judges, juries, defense attorneys and prosecutors - was actually measured in nation-wide polling by two political scientists, Professors Richard L. Fox and Robert W. Van Sickel, of Union College, in Schenectady. Their research was published this year in *Tabloid Justice: Criminal Justice in an Age of Media Frenzy*.

The goal was to determine the effect of a decade of nationally-televised, media-saturated trials on the public's perception of the judicial system and its participants. The technique was to ask a thousand respondents about their "confidence level" in the justice system and its participants, mentioning the "tabloid cases" either first or last. The results (*Id.*, p.132) are given as a statistical table:

COMPONENT OF THE JUDICIAL SYSTEM:	OVERALL CONFIDENCE LEVEL	CONFIDENCE WHEN TABLOID CASES MENTIONED FIRST	CONFIDENCE WHEN TABLOID CASES MENTIONED LAST
Criminal Justice System	20%	15%	25%
Police	31%	24%	30%
Judges	27%	24%	32%
Juries	29%	25%	33%
Defense Attorneys	19%	17%	20%
Prosecuting Attorneys	20%	14%	25%
Number	1003	500	503

A second table from the same work (*Id.*, p. 133) measured the influence of the specific tabloid trials on the degree of citizen confidence in the criminal justice system. It reported:

Change of Confidence in the Criminal Justice system as a result of exposure to:	% Less Confident	% More Confident	% No Change	% Don't Know
Criminal Trial of O.J. Simpson	75	3	19	3
Trial of officers - Rodney King beating	49	5	22	24
Trial of William Kennedy Smith	36	2	16	46
Trial of Louise Woodward	25	6	34	35
Trial of the Menendez brothers	14	25	28	33

This research indicates that the claimed benefit of televised trials - that the public will have more confidence in the judicial system and higher esteem for its participants - is a delusion. This may be due to the fact the vast majority of televised trials are atypical criminal cases, preferably "celebrity cases" (football player Rae Carruth's trial this year revived Court TV's ratings, just imagine if Sean "Puffy" Combs' trial had been televised).

The Feerick Committee Survey

In 1997, the Feerick Committee asked 350 New York judges whether they "strongly or somewhat agreed" or "strongly or somewhat disagreed" with various statements on cameras (its Appendix A, Tab C hereto). On whether television "increased the accuracy of news accounts of judicial proceedings", the judges split 47% - 47%. On whether it "enhanced public understanding of New York's judicial system" 45% were positive, 52% were not. Is it "more likely to serve as a source of entertainment than education" 80% said yes, 18% no. Asked do cameras "transform sensational criminal cases into mass-marketed commercial products" 87% said yes. Finally, 59% did not agree that cameras "has a positive effect on New York's criminal justice system."

The Feerick Committee's Marist poll sought public opinion on the same issues. (Tab B, Q's1-5). By 61% - 35%, the public called televising trials "a bad idea", and not "a good idea"; and 65% - 28% chose "sensationalize" over "increased accuracy." By 61% - 32% televised trials were held a source of entertainment rather than a vehicle to increase public understanding; 62% - 29% opined that cameras "get in the way of a fair trial" more than they "decrease injustice"; while 52% - 20%, felt that cameras had a negative, rather than positive effect on our justice system.

BALANCING THE POSITIVES AND NEGATIVES

The Majority Report (p. 13) “had hoped there would be reliable studies demonstrating the effect of televising trials on public understanding, but we found none” - despite that the Federal Judicial Council’s content analysis, the Roberts Committee’s review of prior studies, the Feerick Committee’s surveys of trial judges and the public, and Profs. Fox and Van Sickle’s findings were before it. This dissent finds these studies both reliable and persuasive.

However, this dissent does not argue for a ban on cameras in the courts. We recognize the Majority Report’s point (p. 14), that to eliminate “television coverage because of sound bites means that we will also lose the educational value of gavel to gavel coverage.” Second, and sadly, there may be truth in its further point (*Id.*) that “most of the citizens in this country are informed about all significant issues from two minute segments on the evening news.”

What we seek is a balance between the limited benefits that televising trials does produce and the potential for negatively impacting the fair trial rights of the parties, as well as an informed decision-maker who bests know when those rights are at risk. It is illusion to believe that more camera coverage will bring greater respect for the judicial system or the legal profession. Televised trials will not be the source of that salvation, and should not be assigned that role.

Our Association makes great efforts to “teach the public about what we do” and gain respect for our profession. Since the televised-trial saturated era of the 1990’s did not achieve those goals, and was apparently counter-productive, it is not logical to believe that yet more televised trials will succeed. That makes as much sense as continuing to pour salt on a cheap steak, on the theory that “at some point it will surely taste good.”

CONSENT OF COUNSEL

The majority's proposal - having the trial judge decide whether witnesses' concerns warrant restricting camera coverage - is an ineffective remedy administered sometimes too late. First, as the record shows, counsel's inability to promise concerned witnesses "no cameras" will be cause enough for some fearful witnesses to take flight, or refuse to participate in trial preparation, or impair credibility assessments or even to drive a victim to a suicide attempt.

Second, how does the judge decide? Does counsel's assurance that a witness is fearful of camera coverage and might flee, or will appear less credible, suffice? Is counsel required to identify the witness, or proffer the expected testimony? Is this to be done in the presence or absence of the adversary? Is a hearing to be held? If the concern is about a prosecution witness, must the hearing be in the defendant's presence? Currently, criminal practice in New York does not require either side to disclose the identity of its fact witnesses, do we now transform our discovery statutes for the dubious benefits of camera coverage?

Proponents argue the benevolent character of cameras in the court is established as "no case has ever been reversed because of the camera's presence" (omitting *Estes, supra*). But how can a convicted defendant demonstrate on appeal that the jury would have credited a critical witness's testimony were it not for the camera's effect, or even more esoteric, that a witness who refused to appear for fear of the cameras would have testified and would have "made the difference?" The prosecution, with no right to appeal an acquittal, is totally without remedy if it loses both a critical witness and the trial. Recall the words of the veteran prosecutor "I had a hard time convincing them to be witnesses; I had a hard time finding them"

Recognizing counsel's unique expertise and vantage-point and choosing it above the trial judge's perspective is not a novel proposition in the law. *People v. Rosario*, 9 NY2d 286, 213 NYS2d 448 (1961), reversed established precedent which had the judge first review a trial witness's prior statements to determine their impeachment value, and, if found, order closure. The Court of Appeals held (9 NY2d at 290) that the potential uses of prior statements for cross examination "... vital perhaps, for discrediting a witness, are certainly not as apparent to the impartial presiding judge as to single-minded counsel for the accused; the latter is in a far better position to appraise the value of a witness' pretrial statements for impeachment purposes."

Finally, we question the majority's priorities, in its ordering of the issues for the trial judge's consideration in deciding whether to allow camera coverage. In the Majority Report's view (pp. 20-21), first on the list is the "[i]mportance of maintaining public trust and confidence in the legal system"; second is the "[i]mportance of promoting public access to the judicial system" and eleventh is "[e]ffect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witnesses."

Would Consent Mean No Televised Cases ?

The Majority Report concedes (p. 18) "there were some indications that some lawyers will decide it is in their clients interests to have cameras in the court" but cautions "if the experience in New York is like the experience in other states, there will be only a few of such instances." This conclusion is again not borne out by the Special Committee's interviews and questionnaires, and the record of past experience in New York.

Our limited survey revealed a half-dozen defense attorneys who consented to televising criminal trials, as did a New York County Lawyers Association survey. To argue that some trial attorneys in some cases will decline camera coverage does not mean that all attorneys will oppose it in all cases, or that any opposition would be without merit. New York lawyers are not known for morbid shyness, and it is commonly believed that merely appearing in a highly-publicized trial can cause a legal career to prosper, and even lead to media employment.

The vast majority of televised trials are criminal cases, (94% of the requests during one New York “experimental period” and two-thirds of a Court TV-supplied list of its televised trials). Further, the prior New York experience on televising arraignments is instructive, as camera coverage was by statute only allowed with counsel’s consent. Statistics from the Office of Court Administration reveal that the majority of applications to televise arraignments were granted, obviously with counsel’s consent. This “arraignment consent experience” in New York is another valid indicator that counsel has and will consent to televising criminal proceedings.

Quite disquieting is the Majority Report’s reasoning (p. 17) that “the problem with relying on attorney consent is that there are cases in which the client’s strategic interest in [not] having cameras in the court is outweighed by the public’s need to know about the case.” This assertion seems to contradict the Majority Report’s earlier statement (p. 3) “we recognize that the primary purpose of a trial is to do justice rather than to educate or inform the public.”

It appears that one statement is a sub-set of the other: the “primary purpose of a trial is to do justice” unless that end is “outweighed by the public’s need to know about the case.” Obviously, it would be the media itself, driven by economic self-interest, which advocates “the public’s need to know”, or more accurately, “the media’s desire to televise.”

Simply put, the media's desire to televise a trial can never outweigh society's commitment to providing justice in its courts, and an accused's right to a fair trial and due process are assured by the Constitution.

Lastly, it is undeniable that provision of a "blue dot" or mosaic distortion, even with voice alteration, may not satisfy any particular witness's concerns, rational or not, that acquaintances, enemies or employers will still recognize them, and that retribution, disgrace or criticism may follow their televised testimony. The Marist Poll results (Tab B) confirm the average citizen's hesitation to testify before cameras, even with these precautions (see Q9 and Q13, p. 11, *supra*), and note that poll respondents only contemplate a hypothetical question, without true emotional content. These are real issues to real people who are potential witnesses

It may be that fearful witnesses do not trust the technology (and our limited survey revealed one case where the "blue dot" slipped and another where the jury was shown). Even with a mosaic distortion, a subpoenaed defense witness at the "Diallo trial" evaded giving testimony favorable to the defendant police officers, consistent with her prior account, because, in the opinion of some, doing so might have made her unpopular in her community.

Substantial numbers of New York's criminal defense attorneys have consented to the televising of high-publicity trials in the past (prosecutions of Joel Steinberg, Arthur Shawcross, Colin Ferguson, to name a few). It appears unreasonable not to at least try a consent system, but rather to insist that proponents' projected harms and what-ifs - that there will not be "enough" televised trials - are reality, and thus must be accommodated. It is wiser to adopt a conservative policy, best balancing the competing values, and rely on actual experience to judge if it functions as anticipated and whether changes should be made.

CONCLUSION

There is substantial evidence in the material gathered by our Special Committee to conclude that prosecutors and defenders share the concern that reluctant witnesses may absent themselves and timid witnesses' testimony may appear less credible, because of their fears and the realities of camera coverage. As Mr. Zauderer's concurrence states (Majority Report, p. 31) "[a] significant feature that emerged in our discussions is that on the issue of coverage of criminal trials, there is no ideological fault line that separates the prosecution from the defense." The Criminal Justice Section Executive Committee, comprised of judges, prosecutors and defense lawyers, voted 31-3 at its January, 2001 meeting to re-affirm its commitment to the consent requirement rule.

Indeed, the public, as distinguished from the media itself, is not so convinced that camera coverage is "a good thing" and by better than a 2-to-1 margin, the public believes that televising trials may negatively impact on their fairness. We should heed the peoples' voice, since it is the public's benefit we are urged to consider.

This dissent respectfully suggests a re-affirmation of the 1994 House of Delegates' Resolution, which supported the permanent enactment of former New York Judiciary Law § 218, but with amendment of its introductory phrase, (sub-sections 5 [a] and [b]), to read:

"Audio-visual coverage of any proceedings in criminal cases shall be permitted,
with the consent of all parties to the proceeding . . ."

TAB A



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #8

REQUESTED ACTION: None at this meeting as the report is for informational purposes at this time.

Attached is the report by the Special Committee on Cameras in the Courtroom. It has been distributed for informational purposes only and no action is required at the January 26, 2001 meeting. The matter is scheduled for formal consideration at the March 31 meeting of the House of Delegates.

Over the past 21 years, the House of Delegates has been on record in favor of experimentation with camera coverage of civil and criminal trials with the exception of 1979. At various times throughout the experimental periods authorized by the Legislature and covering the years 1979, 1980, 1987, 1989, 1991, 1994, the Association's position toward audio-visual coverage of court proceedings has supported either existing legislation to continue the experiment with safeguards (i.e., consent of both parties) or opposition (1979). In June 1994, the House voted to endorse permanency for media coverage of trials, with the provision that counsel for all parties consent to the coverage.

Prior to the scheduled expiration date of June 30, 1997, the New York State Committee to Review Audio-Visual Coverage of Court Proceedings strongly endorsed making the program permanent. However, the Legislature allowed the statute to lapse and negotiations failed to yield a compromise prior to adjournment.

In June 2000, at its meeting in Cooperstown, the House re-opened the issue and authorized that a new committee be appointed to re-examine audio-visual coverage of civil and criminal proceedings in the state's trial courts. President Paul Michael Hassett appointed a 12-member Special Committee on Cameras in the Courtroom, chaired by A. Vincent Buzard, to evaluate and make recommendations on the issue of audio-visual coverage of court proceedings in civil and criminal matters and whether or not the Association's position should be modified. Over a five-month period, the 12-member committee has conducted comprehensive research and interviewed 45 lawyers and judges with firsthand cameras experience.

Committee Chair A. Vincent Buzard will present the report at the meeting and be prepared to respond to any questions that you may have.

TAB B

Q1. In New York State, television cameras are now allowed in certain courtrooms so that trials or parts of trials can be shown to the public on television. Do you think it is a good idea or a bad idea for courtroom trials to be shown on television?

	Total	Race		Watch Trials on TV		Age				Gender	
		White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Good idea	35%	31%	54%	62%	22%	48%	35%	34%	28%	40%	31%
Bad idea	61%	65%	43%	33%	74%	49%	60%	63%	69%	56%	65%
Unsure	4%	4%	3%	5%	4%	3%	5%	3%	3%	4%	4%

Q2. Which statement comes closer to your opinion: one, television cameras in the courtroom increase the accuracy of the news coverage of a trial, or two, television cameras in the courtroom serve more to sensationalize a trial?

	Total	Race		Watch Trials on TV		Age				Gender	
		White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Increase accuracy	28%	24%	49%	52%	16%	32%	25%	26%	30%	32%	24%
Sensationalize	65%	70%	44%	43%	78%	62%	69%	64%	64%	60%	70%
Other	7%	6%	7%	5%	5%	6%	6%	10%	6%	8%	6%

Q3. Which statement comes closer to your opinion: one, television cameras in the courtroom increase the public's understanding of the justice system, or two, television cameras in the courtroom are more a source of entertainment?

	Total	Race		Watch Trials on TV		Age				Gender	
		White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Increase understanding	32%	30%	50%	51%	23%	33%	29%	34%	38%	35%	30%
Entertainment	61%	64%	43%	43%	7%	60%	66%	56%	56%	58%	63%
Other	7%	6%	7%	6%	6%	7%	5%	10%	6%	7%	7%

Q4. Which statement comes closer to your opinion: one, television cameras in the courtroom decrease the possibility that the courts will be unjust, or two, television cameras in the courtroom get in the way of a fair trial?

	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Decrease injustice	29%	27%	44%	46%	21%	33%	27%	28%	29%	33%	26%
Get in way of fair trial	62%	64%	47%	39%	72%	60%	66%	60%	59%	58%	65%
Other	9%	9%	9%	15%	7%	7%	7%	12%	12%	9%	9%

Q5. Overall, do you think television cameras in the courtroom have a positive effect on New York's justice system, a negative effect, or make no difference?

	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Positive effect	20%	18%	35%	36%	12%	16%	21%	20%	21%	23%	17%
Negative effect	52%	57%	32%	30%	65%	45%	55%	56%	51%	52%	52%
Unsure	28%	25%	33%	34%	23%	39%	24%	24%	28%	25%	31%

Q6. If there were television cameras in the courtroom, would you be more willing to serve on a jury, less willing, or would the cameras not make any difference to you?

	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
More willing	2%	2%	5%	2%	2%	2%	1%	2%	7%	2%	3%
Less willing	43%	44%	37%	29%	48%	39%	46%	41%	40%	40%	45%
No difference	55%	54%	58%	69%	50%	59%	53%	57%	53%	58%	52%

Q7. If you had a civil lawsuit, would you want the trial to be televised, not want it to be televised, or would it not make any difference to you?

	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Want it televised	6%	5%	10%	4%	5%	5%	8%	0%	9%	8%	4%
Not want it televised	70%	72%	59%	52%	77%	60%	73%	76%	64%	66%	73%
No difference	24%	23%	31%	44%	18%	35%	19%	24%	27%	26%	23%

Q8. If there were television cameras in the courtroom, would you be more willing to testify as a witness in a non-criminal case, less willing, or would the cameras not make any difference to you?

	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
More willing	3%	2%	5%	2%	2%	2%	1%	2%	7%	3%	2%
Less willing	45%	46%	51%	36%	49%	38%	47%	48%	42%	42%	49%
No difference	52%	52%	44%	62%	49%	60%	52%	50%	51%	55%	49%

Q9. If your image was blurred so that viewers could not see your face on television, would you be more willing to testify as a witness in a non-criminal case, less willing, or would the blurred image not make any difference to you?

(Asked only of those who in the previous question responded that they were less willing to testify as a witness if there were television cameras in the courtroom.)

Asked only of those' less willing to testify	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
More willing	18%	17%	25%	39%	14%	15%	21%	15%	21%	16%	21%
Less willing	57%	59%	61%	26%	64%	48%	64%	61%	41%	64%	51%
No difference	25%	24%	14%	35%	22%	37%	15%	24%	38%	20%	28%

Q10. If there were only newspaper reporters, no cameras, in the courtroom, would you be willing to testify as a witness in a non-criminal case, not willing, or would the presence of newspaper reporters not make any difference on your willingness to testify?

	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Willing	19%	17%	33%	18%	6%	21%	18%	17%	20%	15%	23%
Not willing	17%	17%	27%	7%	20%	15%	15%	20%	17%	15%	18%
No difference	64%	66%	40%	75%	64%	64%	67%	63%	63%	70%	59%

Q11. If you were a defendant in a criminal case, would you want the trial to be televised, not want it to be televised, or would it not make any difference to you?

	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Want it televised	6%	5%	13%	8%	4%	7%	5%	7%	5%	8%	4%
Not want it televised	69%	75%	31%	43%	86%	59%	70%	76%	69%	63%	75%
No difference	25%	20%	56%	49%	10%	34%	25%	17%	26%	29%	21%

Q12. If you were a crime victim, would you want the trial to be televised, not want it to be televised, or would it not make any difference to you?

	Race			Watch Trials on TV		Age				Gender	
	Total	White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Want it televised	13%	12%	13%	25%	8%	9%	13%	19%	10%	16%	10%
Not want it televised	68%	71%	59%	48%	78%	71%	63%	67%	77%	60%	76%
No difference	19%	17%	28%	27%	14%	20%	24%	14%	13%	24%	14%

Q13. If there were television cameras in the courtroom, would you be more willing to testify as a witness to a crime, less willing, or would the cameras not make any difference to you?

	Total	Race		Watch Trials on TV		Age				Gender	
		White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
More willing	4%	4%	0%	8%	3%	5%	4%	4%	2%	5%	3%
Less willing	54%	55%	45%	41%	60%	59%	54%	53%	53%	42%	64%
No difference	42%	41%	55%	51%	37%	36%	42%	43%	45%	53%	33%

Q14. If your image was blurred so that viewers could not see your face on television, would you be more willing to testify as a witness to a crime, less willing, or would the blurred image not make any difference to you?
 (Asked only of those who in the previous question responded that they were less willing to testify as a witness to a crime if there were television cameras in the courtroom.)

	Total	Race		Watch Trials on TV		Age				Gender	
		White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
More willing	38%	35%	47%	49%	32%	46%	42%	35%	29%	41%	36%
Less willing	34%	34%	31%	26%	35%	22%	38%	40%	38%	36%	33%
No difference	28%	31%	22%	25%	33%	42%	20%	25%	33%	23%	31%

Q15. If there were only newspaper reporters, no cameras, in the courtroom, would you be willing to testify as a witness to a crime, not willing, or would the presence of newspaper reporters not make any difference on your willingness to testify?

	Total	Race		Watch Trials on TV		Age				Gender	
		White	Black	Yes	No	18-30	31-44	45-60	Over 60	Men	Women
Willing	18%	17%	10%	20%	16%	18%	21%	14%	17%	14%	21%
Not willing	20%	21%	16%	20%	21%	20%	14%	26%	23%	16%	23%
No difference	62%	62%	74%	60%	63%	62%	65%	60%	60%	70%	56%

TAB C

NEW YORK STATE
 COMMITTEE TO REVIEW AUDIO VISUAL COVERAGE OF COURT PROCEEDINGS
 CAMERAS IN NEW YORK COURTROOMS JUDICIAL SURVEY

PART I

Questions 1 through 10 invite responses from ALL JUDGES, whether or not you have had experience with cameras in your courtroom.

351 judges responded to Part I of the Survey.

1. Name (optional): _____

2. (a) How many years have you served on the bench? 11.63 (average)
 (b) Court(s) in which you have presided: _____

Civil <u>135</u>	Supreme <u>225</u>
Criminal <u>153</u>	City <u>61</u>
District <u>24</u>	Family <u>94</u>
County <u>94</u>	Other <u>70</u>

(c) County in which your court is located: _____

3. (a) In approximately how many jury trials have you presided: **N = 351**

Civil <u>69 (average)</u>	Criminal <u>84 (average)</u>
---------------------------	------------------------------

(b) In approximately how many proceedings have you presided in which television cameras were present:

Civil <u>3.4 (average)</u>	Criminal <u>9.3 (average)</u>
N = 63	N = 157

(c) Prior to your service on the bench, did you ever serve as a _____ **N**

(i) criminal defense counsel?	Yes <u>68%</u>	No <u>32%</u>	318
(ii) criminal prosecutor?	Yes <u>47%</u>	No <u>53%</u>	301
(iii) civil litigator?	Yes <u>86%</u>	No <u>14%</u>	333

4. Do you agree or disagree with the following statements (please check the applicable box):

	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No Opinion	N	Weighted Mean
Television coverage:							
(a) Increases the accuracy of news accounts of judicial proceedings	9%	38%	24%	23%	5%	349	- 0.12
(b) Has enhanced public understanding of New York's judicial system	10%	35%	27%	25%	3%	350	- 0.2
(c) Is more likely to serve as a source of entertainment than education for the viewing public	41%	39%	15%	3%	2%	350	0.91
(d) Serves as a deterrent against injustice	3%	22%	29%	39%	8%	346	- 0.78
(e) Fosters public scrutiny of court proceedings	13%	50%	21%	12%	4%	346	0.31
(f) Transforms sensational criminal trials into mass-marketed commercial products	57%	30%	5%	5%	3%	351	1.29
(g) Tends to cause judges to issue rulings they might otherwise not issue	10%	27%	24%	28%	11%	350	- 0.34
(h) Poses a potential threat to judicial independence	17%	28%	23%	25%	7%	350	- 0.11
(i) Has impaired judicial dignity or courtroom decorum in New York	17%	22%	23%	27%	11%	350	- 0.22
(j) Has had a positive effect on New York's <i>civil</i> justice system	3%	14%	22%	24%	38%	349	- 0.50
(k) Has had a positive effect on New York's <i>criminal</i> justice system	5%	20%	30%	29%	16%	350	- 0.57

If you would like to comment further, please check the box to the right and include your comments in the space below or on the blank pages at the end of this questionnaire.

5. Do you agree or disagree with the following statements (please check the applicable box):

	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No opinion	N	Weighted Mean
Criminal Cases							
(a) Trial judges should have discretion to allow criminal trials to be televised	62%	23%	6%	7%	2%	345	1.278
(b) Television cameras should not be allowed in criminal trials unless the defendant consents	29%	14%	21%	31%	4%	343	- 0.120
(c) Television cameras should not be allowed in criminal trials unless both the prosecution and the defendant consent	26%	19%	20%	31%	4%	341	-0.123
(d) Television cameras should not be permitted in criminal trials	21%	15%	22%	38%	4%	344	- 0.387
(e) Television cameras should not be permitted in criminal trials if the crime victim (or surviving family members) object(s) to camera coverage of the trial	34%	24%	16%	20%	5%	339	0.360
Civil Cases							
(f) Judges should have discretion to allow civil trials to be televised	59%	22%	6%	5%	8%	340	1.241
(g) Television cameras should not be allowed in civil trials unless both parties consent	29%	20%	17%	24%	10%	333	0.132
(h) Television cameras should not be permitted in civil trials	15%	15%	21%	38%	11%	343	- 0.504

If you would like to comment further, please check the box to the right and include your comments in the space below or on the blank pages at the end of this questionnaire.

	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No opinion	N	Weight Mean
5. Accuracy of coverage							
(j) In the majority of cases, <i>televised nightly news</i> coverage of court proceedings accurately represents what actually takes place in New York courtrooms	2%	21%	35%	34%	7%	349	-0.768
(k) In the majority of cases, <i>televised gavel - to - gavel</i> coverage of court proceedings accurately represents what actually takes place in New York courtrooms	17%	48%	16%	8%	14%	351	0.464
(l) In the majority of cases, <i>televised</i> coverage of court proceedings in <i>news feature programs</i> (such as "Prime Time Justice" or "American Justice") accurately represents what actually takes place in New York courtrooms	1%	18%	25%	31%	24%	346	-0.662
(m) In the majority of cases, <i>newspaper</i> coverage of court proceedings accurately represents what actually takes place in New York courtrooms	4%	31%	39%	23%	3%	349	-0.464
(n) I am concerned about the commercial exploitation of judicial proceedings by the <i>television</i> industry	52%	28%	8%	4%	9%	349	1.149
(o) I am concerned about the commercial exploitation of judicial proceedings by <i>newspaper</i> companies	30%	28%	22%	9%	11%	349	0.467

If you would like to comment further, please check the box to the right and include your comments in the space below or on the blank pages at the end of this questionnaire.

6. (a) Does section 218 of the Judiciary Law need modification? Yes 43% No 57% N = 230

(b) If yes, what provisions should be modified and what specific changes should be made?

(You may use the space below, or, if more space is needed, please check the box on the right

7. If television cameras are permitted in criminal trials, do you favor:

	Yes	No	
(a) delayed broadcasting (i.e. after the verdict) instead of contemporaneous broadcasting?	50%	50%	N = 326
(b) giving the judge a "kill switch" which would allow you to stop all audiovisual coverage at appropriate moments?	72%	28%	N = 328
(c) installation of a ten-second time delay device to prevent inadvertent transmission of certain prohibited testimony or images?	77%	23%	N = 319

(d) other (please specify):

	Yes	No	
8. (a) In your opinion, are different rules needed to govern television camera access in cases in which the <i>death penalty</i> is sought?	31%	69%	N = 320
(b) Do you favor banning television cameras in <i>death penalty</i> cases?	42%	58%	N = 323
(c) If you favor special rules for television cameras in <i>death penalty</i> cases, please explain:	28%	74%	N = 158

(You may use the space below, or, if more space is needed, please check the box on the right and use the blank sheets at the end of this questionnaire)

Yes No

9. Have you ever been interviewed on television or radio about a televised court proceeding? If yes, please identify: 14% 86% N = 344

- (a) the case about which you were interviewed: _____
- (b) the name of the television or radio station on which you appeared: _____
- (c) the name of the program on which you appeared: _____
- (d) the subject matter of the interview: _____
- (e) the date of the interview: _____

10. Overall, how do you feel about:

	Strongly in favor	Somewhat in favor	Somewhat opposed	Strongly opposed	No opinion	N	Weight Mean
(a) Television coverage of <i>criminal</i> trials	16%	33%	18%	30%	3%	348	- 0.118
(b) Television coverage of <i>civil</i> trials	15%	33%	19%	24%	10%	345	- 0.043
(c) Television coverage of oral pre-trial arguments in <i>criminal</i> cases	10%	25%	22%	40%	3%	346	- 0.566
(d) Television coverage of oral pre-trial arguments in <i>civil</i> cases	10%	25%	22%	31%	11%	344	- 0.404

If you have additional comments, including noteworthy experiences with cameras in your courtroom, please check the box to the right and include your comments on the blank pages at the end of this questionnaire.

If you would like to be contacted for a more detailed telephone interview, please check the box to the right and provide us with your name and telephone number.

Name: _____

Phone number: (_____) _____ -- _____

Most convenient time of day to contact you: _____

Thank you very much for taking the time to complete this portion of the survey. If you have, at any time, received an application to permit television coverage in your courtroom, please proceed to PART II, questions 11 through 25.

NEW YORK STATE
 COMMITTEE TO REVIEW AUDIO VISUAL COVERAGE OF COURT PROCEEDINGS
 CAMERAS IN NEW YORK COURTROOMS JUDICIAL SURVEY

PART II

Questions 11 through 25 should be completed ONLY if you have, at any time, received an application to permit television coverage in your courtroom.

226 judges responded to Part II of the Survey.

1. (a) Have you ever *granted* an application for television coverage in your courtroom? Yes 91% No 9% N = 226

(b) If so, in *granting* an application for television, what factors do you typically take into account? (please check all that apply)

	N = 205	
	Criminal	Civil
(i) absence of objections	74%	32%
(ii) educational value of the proceedings	32%	20%
(iii) importance of promoting public access to the judicial system	54%	27%
(iv) importance of maintaining public trust and confidence in the judicial system	55%	26%
(v) strength of public's interest in the proceedings	38%	21%
(vi) strength of print media's interest in the proceedings	19%	11%
(vii) public's need to understand my judicial philosophy	9%	3%
(viii) other (please specify)		

2. (a) Have you ever *denied* an application for television cameras in your courtroom? Yes 58% No 42% N = 207

(b) In denying an application for television coverage (other than for an arraignment or suppression hearing), what factors do you typically take into account? (please check all that apply):

	N = 121	Criminal	Civil
(i) objections of defense		80%	18%
(ii) objections of prosecution		61%	12%
(iii) objections of witnesses		55%	12%
(iv) application untimely		51%	12%
(v) effect on witnesses' willingness to cooperate, including risk that coverage will engender threats to the health or safety of any witness		55%	12%
(vi) effect on excluded witnesses who would have access to televised testimony of prior witnesses		24%	8%
(vii) whether coverage might unfairly influence or distract the jury		38%	16%
(viii) implications for selecting a fair and impartial jury		28%	10%
(ix) difficulty of jury selection if a mistrial is declared		12%	7%
(x) type of case involved		52%	17%
(xi) possible interference with defendant's right to a fair trial		55%	13%
(xii) possible interference with law enforcement activities		30%	5%
(xiii) presence of lewd or scandalous matters		30%	10%
(xiv) undue administrative or financial burden to the court		8%	5%
(xv) other (please specify)			-

13. (a) In a *criminal* case (other than an arraignment or suppression hearing), have you ever permitted television coverage over the objections of the defense? Yes 48% No 52% N=186

(b) If yes, in how many criminal cases where television coverage was sought have you overruled defense objections to coverage? (5) cases (average) N = 78

(c) If yes, what factors have you taken into account in granting permission for television coverage over the defense's objection?

N = 89

(i) educational value of the proceedings

34%

(ii) importance of promoting public access to the judicial system

76%

(iii) importance of maintaining public trust and confidence in the judicial system

73%

(iv) strength of public's interest in the proceedings

46%

(v) strength of print media's interest in the proceedings

19%

(vi) public's need to understand my judicial philosophy

10%

(vii) other

(d) Have you ever denied an application for television coverage in a *criminal* case where the defendant requested or consented to camera coverage? Yes 5% No 95%

N=185

(e) If yes, please explain:

(c) In *civil* cases, have you imposed restrictions on television coverage in addition to those required by section 218 of the Judiciary Law and 22 NYCRR Part 131?

Yes 7% No 93% N=121

If yes, what type of additional restrictions have you imposed?

(d) _____

17. How do you assure yourself that televised footage filmed in your courtroom and subsequently broadcast actually complies with the restrictions required by law and any additional restrictions you may have imposed? (please check all that apply):

(a) by monitoring news broadcasts

32%

(b) by reviewing videotapes provided by the news media

4%

N=226

(c) information from counsel

37%

(d) information from court personnel

35%

(e) other (please specify)

18. (a) In a case in which television cameras are present, do you typically question witnesses under oath to determine if they have viewed televised broadcasts about the trial?

Yes 6% No 94% N=143

(b) If yes, approximately how many witnesses have acknowledged that they have viewed such broadcasts? (insignificant number of responses) . . .

9. (a) Section 218 (5) (c) of the Judiciary Law imposes on counsel in criminal cases the obligation to advise each nonparty witness that he or she has a right to request that his or her image be visually obscured during testimony. Do you believe it would be better for this admonition to be made by the presiding judge? Please explain.

Yes 53% No 47% N=171

(b) When confronted with a witness who is reluctant to testify before television cameras, are you more likely to (check one):

(i) question the witness about his or her reservations

28%

N = 226

(ii) proceed directly to order the cameras to obscure the witness' image

34%

(iii) other (please specify): _____

(c) Approximately how many witnesses in your courtroom have requested that their image be visually obscured? (2-3). (average) N= 115

(d) In approximately what percent of cases in which television cameras were present in your courtroom has a witness requested that his or her image be visually obscured? (10%) (average) N= 103

20.(a) Before the beginning of a televised trial, do you typically say anything to the prospective jurors about the presence of the cameras?

Yes 76%
No 24% N = 119

(b) If yes, what do you typically say and what, if any, other precautions do you take to ensure that the jury is not affected by the presence of cameras?

21. Do you agree or disagree with the following statements (please check the applicable box):

	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No opinion	N	Weighted Mean
(a) My administrative/supervisory burden was significantly increased by the presence of television cameras in my courtroom	12%	39%	18%	23%	8%	181	-0.011
(b) I have experienced a significant decrease in the public's willingness to serve as jurors in cases in which television cameras are present in the courtroom	3%	6%	20%	32%	39%	175	-0.726
(c) Trials in which television cameras were present were significantly longer than comparable cases covered only by the print media	7%	15%	18%	28%	32%	177	-0.443

2. Do you agree or disagree with the following statements (please check the applicable box):

	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No opinion	N	Weighted Mean
(a) Jurors were more attentive in cases in which TV cameras were present	4%	14%	17%	18%	48%	169	-0.308
(b) In cases in which TV cameras were present, jurors were more likely to have communications with people who have seen coverage of the case	4%	13%	10%	14%	59%	165	-0.170
(c) Jurors were more likely to be aware of the implications of their verdict in cases in which TV cameras were present	8%	22%	10%	11%	48%	167	0.060
(d) Witnesses' privacy was violated by the presence of TV cameras	10%	22%	24%	23%	21%	172	-0.285
(e) Witnesses were distracted by the presence of TV cameras	13%	19%	24%	19%	24%	175	-0.171
(f) Witnesses were more nervous in the presence of TV cameras	12%	28%	18%	13%	28%	173	0.064
(g) Witnesses were more truthful in the presence of TV cameras	0%	3%	27%	20%	49%	174	-0.638
(h) Witnesses' testimony was more guarded in the presence of TV cameras	6%	16%	25%	15%	38%	174	-0.276
(i) Witnesses' testimony was unchanged in the presence of cameras	14%	26%	12%	8%	39%	170	0.265
(j) In cases in which TV cameras were present, trial participants were sensitive to how the day's events in court would "play" on the evening news and tended to shape their actions accordingly	11%	23%	20%	12%	34%	172	0.012
(k) Lawyers came to court better prepared in cases in which TV cameras were present	6%	29%	18%	13%	33%	174	-0.017

23. Compared to similar cases covered only by the print media, were there, in the case(s) where you allowed television cameras, more or fewer attempts made to offer unnecessary:

	More	Fewer	About the same	N
a. Motions	16%	2%	82%	144
b. Evidence	11%	1%	87%	142
c. Witnesses	10%	1%	89%	138
d. Objections	26%	3%	71%	141
e. Argument	33%	3%	65%	147

24. (a) Compared to similar trials covered by the print media, did you notice a change in the behavior of the spectators in trials in which television cameras were present?

Yes 17% No 83% N= 151

(b) If yes, please describe.

25. (a) Are you aware of any violations of section 218 of the Judiciary Law by the media or any improper or inappropriate use of television footage filmed in a courtroom?

Yes 9% No 91% N= 172

(b) If so, please describe.

(c) Have you ever withdrawn consent for a television camera in your courtroom? Yes 6% No 94%

N= 177

(d) If yes, why?

Thank you.

If you have additional comments, including noteworthy experiences with cameras in your courtroom, please check the box to the right and include these comments on the blank pages at the end of this questionnaire.

If you would like to be contacted for a more detailed telephone interview, please check the box to the right and provide us with your name and telephone number.

Name: _____

Phone number: (_____) _____ -- _____

Most convenient time of day to contact you: _____

Please complete and return the original by November 30, 1996 to:

Dean John D. Feerick

Fordham University School of Law

140 West 62nd Street

New York NY 10023

Appendix A

LIST OF COMMITTEE MEETINGS

<u>DATE</u>	<u>LOCATION</u>
1. September 26, 2000	The Chemists' Club New York City
2. October 10, 2000	AT&T Conference Call
3. October 26, 2000*	Law Offices of Nixon Peabody, LLP New York City
4. November 21, 2000	AT&T Conference Call
5. December 11, 2000	Law Offices of Nixon Peabody, LLP New York City
6. December 21, 2000	AT&T Conference Call
7. January 5, 2001	Law Offices of Nixon Peabody, LLP New York City
8. January 16, 2001	AT&T Conference Call
9. March 14, 2001	AT&T Conference Call

* Denotes that the following individuals appeared as guests at this meeting:

Philip O'Brien, Managing Editor, WNBC-TV Channel 4, New York City

Ira D. London, Esq., New York City

Douglas P. Jacobs, Esq., Vice President & General Counsel, Court TV, New York City

Raymond A. Kelly, Esq., Albany

Judge Charles J. Siragusa, U.S. District Court for the Western District of New York, Rochester

Jean Walsh, Esq., Deputy Inspector General and General Counsel, State of New York, New York City

Christy Gibney Carey, Esq., Director, Criminal Court Program, Brooklyn

Judge Leslie Crocker Snyder, Acting Justice, Supreme Court, First Judicial District

Appendix B

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Faxes:

Landy, Craig A., to Vince Buzard. Position of the New York County Lawyers' Association citing NYCLA's opposition to the recommendation that consent of both parties not be required. March 14, 2001. 2 pages.

Mereson, Julie S., Assistant Solicitor General. Fax to Brad Carr and Frank Ciervo. Contains copy of article, *Daily News v. Teresi*. Oct. 25, 2000. 7 pages. ('Miscellaneous' file)

Adelman, Martin B. Fax to Juli Robinson. Re: two people for 10/26 meeting. Oct. 12, 2000. 1 page. ('Miscellaneous' file)

Samuels, Chuck, WOKR TV, Rochester, news director. Fax to A. Vincent Buzard. Re: Buzard's information request. Oct. 24, 2000. 1 page. ('Miscellaneous' file)

Buzard, A. Vincent. Fax to Ira London; Hon. Charles J. Siragusa; Philip O'Brien, managing director of WNBC-TV; Hon. Leslie Crocker Snyder; and Douglas P. Jacobs, Court TV. Asks each to speak of courtroom cameras experiences at Oct. 26 meeting. Oct. 17, 2000. 10 pages. ('Miscellaneous' file)

Buzard, A. Vincent. Fax to Members, Special Committee on Cameras in the Courtroom. Re: lineup for Oct. 26 meeting. Oct. 19, 2000. 1 page. ('Miscellaneous' file)

Carr, Brad. Fax to Ira D. London. Re: conference call. Oct. 19, 2000. 1 page. ('Miscellaneous' file)

Ciervo, Frank. Fax to A. Vincent Buzard. Re: Court TV contact. Oct. 10, 2000. 1 page. ('Miscellaneous' file)

Adelman, Martin B. Fax to Brad Carr or Frank Ciervo. Re: contacting Jonathan Gradess, New York State Defenders Association. Sept. 26, 2000. 3 pages. ('Sept. 26, 2000' file)

Carr, Brad. Fax to James B. Eaglin, Federal Judicial Center. Re: request for copies to be made of videotapes used in 1994 study, "Electronic Media Coverage of Federal Civil Proceedings..." Oct. 30, 2000. 1 page. ('Federal Judicial Center' file)

Information about organizations/people:

Safe Horizon. Folder containing their 2000 legislative agenda, background, facts, and representative press. 11 pages. ('Miscellaneous' file)

Walsh, Jean. Résumé. 1 page. ('Oct. 23, 2000' file)

"Federal Judicial Center Information." Oct. 30, 2000
<www.fjc.gov/public/fjcweb.nsf/3b3...bd617b77eb28525679b006cd086?OpenDocument>. 1 page. ('Federal Judicial Center' file)

Letters:

O'Brien, Philip. Letter to Beverly M. Poppell supportive of the preliminary report but with disagreement on need for 30-days notice, opposition to the presumption against covering sex abuse or domestic relations matters, and opposition to having broadcasters tape trials in their entirety. March 4, 2001. 1 page.

Miller, Henry G. Letter to Vince Buzard supporting conclusions stated in committee's preliminary report and suggesting that cameras should be permitted presumptively. February 12, 2001. 2 pages.

Carter, John E., Jr. Letter to members of the Special Committee on Cameras in the Courts. Re: Children and the Law Committee comments. Dec. 5, 2000. 3 pages.

Adelman, Martin B. Letter to members of the Special Committee on Cameras in the Courts. Attachment: final chapter of Tabloid Justice: Criminal Justice in the Age of Media Frenzy, titled, "Is There Any Escape from Tabloid Justice?" 20 pages.

Easton, William T., First Deputy, Western Region, Capital Defender Office. Letter to A. Vincent Buzard. Re: New York State Bar Association Committee on Cameras in Courtroom. Follow-up to Oct. 17, 2000 phone conversation. Oct. 26, 2000. 2 pages.

Smolowitz, Barry M. Letter to Harvey B. Besunder. "Cameras in the Courtroom." Sept. 25, 2000. 2 pages. ('Miscellaneous' file)

Buzard, A. Vincent. Letters to Samuel S. Rumore, Jr., Alabama State Bar Association president; Kent A. Gernander, Minnesota State Bar Association president; Joe Crosthwait, Jr., Oklahoma State Bar Association president; and Ron D. Harrison, Arkansas State Bar Association president. Re: questions about each state's experience with the consent requirement. Oct. 13, 2000. 1 page each. ('Miscellaneous' file)

Buzard, A. Vincent. Letter to Gunther H. Kilsch. Re: cameras effect on physicians in court. Oct. 13, 2000. 1 page. ('Miscellaneous' file)

Buzard, A. Vincent. Letters to Hon. Robert Charles Kohm, Supreme Court Justice; Sharon M. Porcellio; Steven L. Kessler; Louis B. Cristo; and Thomas Lindgren. Request for information on experiences with courtroom cameras. Oct. 13, 2000. 1 page each. ('Miscellaneous' file)

Buzard, A. Vincent. Letters to news directors. Requesting analysis or information regarding courtroom cameras. Attached is the list of news directors. Oct. 18, 2000. 3 pages. ('Miscellaneous' file)

Conti, S. Paul , Jr., WNYT TV Albany. Letter to A. Vincent Buzard. Re: Buzard's information request. Oct. 20, 2000. 2 pages. ('Miscellaneous' file)

Buzard, A. Vincent. Letter to Bar Leaders. Re: request for names of judges and lawyers with firsthand courtroom camera experiences instead of association reports or studies. Oct. 13, 2000. 1 page. ('Miscellaneous' file)

Johnson, Philip C. of Levene Gouldin & Thomson, LLP, Binghamton. Letter to Brad Carr. Re: he is unaware of members of Southern Tier Chapter of New York State Trial Lawyers Association who have participated in a televised trial. Oct. 6, 2000. 1 page. ('Miscellaneous' file)

Abrutyn, Stephanie W., counsel, East Coast Media, Tribune Corporation. Letter to Brad Carr. Re: Court TV's application to permit television coverage of Diallo trial. Sept. 27, 2000. 1 page. ('Miscellaneous' file)

Russo, Salvatore. Letter to A. Vincent Buzard. "Cameras in the Courtroom." Sept. 25, 2000. 1 page. ('Miscellaneous' file)

Buzard, A. Vincent. Letters to Douglas P. Jacobs, Raymond A. Kelly, Jr., Christy Gibney Carey, Jean Walsh, Hon. Leslie Crocker Snyder, Ira London, Philip O'Brien, and Beverly M. Poppell. Thank you letters. Nov. 1, 2000. 8 pages. ('Miscellaneous' file)

Ciervo, Frank J. Letter to Raymond A. Kelly, Jr., cc: A. Vincent Buzard. Re: obtaining details of the cases he referenced during phone interview. Nov. 7, 2000. 1 page. ('Miscellaneous' file)

Buzard, A. Vincent. Letter to Margaret Finnerty. "New York State Bar Association Cameras in the Courtroom." Re: enc. draft questionnaire. Nov. 6, 2000. 1 page. ('Miscellaneous' file)

Buzard, A. Vincent. Letter to Members of the Special Committee on Cameras in the Courtroom. "Meeting Schedule and Work Plan." Nov. 2, 2000. 2 pages. ('Nov. 10, 2000' file)

Carr, Brad. Letter to Members of the Special Committee on Cameras in the Courtroom. "Correspondence." Contains copies of Buzard's correspondence. Oct. 25, 2000. 9 pages. ('Oct. 23, 2000' file)

Adelman, Martin B. Letter to Members of the Special Committee on Cameras in the Courtroom. "Additional Materials on Cameras in the Courtroom." Contains enclosures: memorandum of the

Criminal Justice Section (June 1994); resolution of the NYS Assoc. of Criminal Defense Lawyers (May 1992); *New York Times* article (July 21, 1997); comment by NYS Sen. John Dunne (ret'd); *NY Law Journal* article (Feb. 16, 2000); *NY Law Journal* article (April 4, 1997); Jack T. Litman article from *The Champion* (Jan/Feb 1996). 21 pages. ('Sept. 26, 2000' file)

Buzard, A. Vincent. Letter to Barbara Cochran., RTNDA president. Re: requesting analyses or studies. Oct. 23, 2000. ('NCSC & RTNDA Charts' file)

Palermo, Anthony R. Correspondence between A. Franklin Mahoney, chairman, Media Advisory Committee, Supreme Court; James C. Goodale, vice chairman and general counsel, The New York Times Co.; Hon. Lawrence H. Cooke, chief judge of the State of NY. Re: Special Committee on Public Access to Information and Proceedings of the NYSBA. 1979-1980. 9 pages. ('NYSBA' file)

Meeting Minutes, Materials and Agendas:

Preliminary DRAFT Outline of Cameras in Court Issues (Revised 11/21/00). 3 pages.

Special Committee on Cameras in the Courtroom. "*Addendum: Minutes of Meeting, AT&T Conference Call. Dec. 21, 2000.*" 2 pages.

Special Committee on Cameras in the Courtroom. "*Minutes: Meeting of Dec. 11, 2000.*" 2 pages.

Special Committee on Cameras in the Courtroom. "*Open Issues for Committee.*" 1 page.

Committee on Women in the Law. "*Minutes: Meeting of Oct. 11, 2000.*" 1 page.

"*Agenda: Special Committee on Cameras in the Courtroom, January 5, 2001.*" 1 page.

Special Committee on Cameras in the Courtroom. "*Minutes of Meeting: January 5, 2001.*" 4 pages.

"*Agenda: Special Committee on Cameras in the Courtroom, December 11, 2000.*" 1 page.

Pretrial proceedings, portions of trial, and NY code re: cameras in the courtrooms. 8 pages.

Fourteen questions about the allowance of cameras in the courtrooms.

Carr, Brad. Materials to Special Committee on Cameras in the Courtroom, mailed to committee members for Dec. 11, 2000 meeting. Contains:

- Certified transcript of the October 26 committee meeting.
- Goldfarb, Ronald L. and Leone, Richard C. TV or Not TV: Television, Justice, and the Courts, New York University Press, 238 pages, January 2000.
- Revised DRAFT outline prepared by staff of issues relating to cameras in the courtroom.

- Report and Recommendations of the Health Law Section Subcommittee on Cameras in the Courtroom.
- Memorandum dated November 16, 2000 from Kathleen Mulligan Baxter, Esq., counsel, NYSBA.
- Memorandum dated November 28, 2000 from Frank Ciervo re: Cameras in the New York State Court of Appeals.
- Bound volume containing a compilation of the completed telephone interview questionnaires.
- Letter dated November 13, 2000 to Mr. Buzard from the Alabama State Bar Association (NOTE: Alabama is one of the state requiring consent.)
- Memo to file dated Nov. 9, 2000 concerning a telephone conversation with J.D. Gingerich of the Arkansas Administrative Office of the Courts (responding to Mr. Buzard's letter addressed to the president of the Arkansas Bar Association). (NOTE: Arkansas is one of the states requiring consent.)
- Memo to file dated November 9 to Mr. Buzard from S. Douglas Dodd responding to Mr. Buzard's letter addressed to the president of the Oklahoma Bar Association. (NOTE: Oklahoma is one of the states requiring consent.)
- Letter date Nov. 9 to Mr. Buzard from S. Douglas Dodd responding to Mr. Buzard's letter addressed to the president of the Oklahoma Bar Association. (NOTE: Oklahoma is one of the states requiring consent.)
- Newspaper articles and editorials:
 - "Campaigns prepare legal volleys for battle Rival's feud rumbles into state's high court today," USA TODAY, November 20, 2000.
 - "High court should let TV in," (Editorial) St. Petersburg Times, November 20, 2000.
 - "2 parties, 3 recounts, 7 justices," St. Petersburg Times, November 20, 2000.
 - "Making the Case for Court Cameras," (Editorial) Chicago Tribune, November 21, 2000.
 - "DECISION 2000/AMERICA WAITS, Florida Airs Some Must-See TV," Los Angeles Times, November 21, 2000.
 - "Survey Shows Court Reform has Support," New York Law Journal, October 31, 2000.
 - "DA, Expert hail Camera at Trial," Buffalo News, October 17, 2000.
 - "Cameras in the Courtroom," (Editorial) Buffalo News, November 2, 2000.
 - "Should state allow cameras in courtrooms?" Middletown Times Herald Record, October 31, 2000.
 - "Justice in the open," (Editorial) Albany Times Union, November 21, 2000.
 - "'Real Justice': Justice and Lawyers Who May Not Comb Their Hair." The New York Times, Nov. 14, 2000.
 - "The Election: Not Exactly Made for TV, But Think of the Ratings," The New York Times, Nov. 26, 2000.
 - "CNN asks high court to allow TV," Atlanta Journal-Constitution, Nov. 26, 2000.
 - "Bring back cameras," (Editorial) Rochester Democrat & Chronicle, Nov. 27, 2000.
 - "C-SPAN Hopes Supreme Court is Ready for it's Closeup," law.com, Nov. 27, 2000.

- Transcript of NBC Today Show segment featuring Floyd Abrams and Judge Edward Becker, Nov. 27, 2000.
- “Contesting the Vote: The Supreme Court; Justices Stand by No-Camera Policy,” The New York Times, Nov. 28, 2000.
- “No Day in Court,” (Editorial) Los Angeles Times, Nov. 28, 2000.
- “Let the sun shine in,” Scripps Howard News Service, Nov. 28, 2000.
- “Rehnquist to release audiotape of court proceedings,” Associated Press, Nov. 28, 2000.
- “Senators call for Rehnquist to reconsider decision to ban cameras,” Associated Press, Nov. 28, 2000.
- Transcript of CNN Morning News interview with attorney Ronald L. Goldfarb, author of the book, “TV or Not TV: Television, Justice, and the Courts,” Nov. 29, 2000.
- “Supreme Court Session We Should All See,” New York Times, Nov. 29, 2000.
- “Advocates of TV Coverage Object to Justices’ Ruling Against Cameras,” Chicago Tribune, Nov. 30, 2000.
- Letter dated Nov. 14 to Mr. Buzard from Ron Lombard, news director, WIXT-TV, Syracuse.
- List of attorneys and judges to be contacted by the New York County Lawyers’ Association Task Force on Cameras in the Courtroom (furnished by Peggy Finerty, Esq.)

Carr, Brad. Additional materials to supplement those already sent to Special Committee on Cameras in the Courtroom on Dec. 4, 2000. Contains:

- Bound volume compilation of telephone interviews conducted by the Special Committee.
- Telephone interviews conducted by the New York County Lawyers’ Association Task Force on Cameras in the Courtroom.
- “Televising the Highest Court,” (Editorial) New York Times, Dec. 5, 2000.
- Digest of states that do not have simple ‘trial judge exercises discretion only rules,’ prepared by Mr. Adelman dated Nov. 11, 2000.
- Report of the Committee on Children and the Law re: cameras in the courtroom.
- Letter from William T. Easton, Esq. First Deputy Capital Defender, to Mr. Buzard dated Oct. 26, 2000.

Special Committee on Cameras in the Courtroom. “Minutes of Meeting: AT&T Conference Call, November 21, 2000.” 4 pages.

Special Committee on Cameras in the Courtroom. “Minutes of Meeting: October 26, 2000.” 2 pages. (‘Oct. 23, 2000’ file)

“Agenda: (Revised 10-25-00) Special Committee on Cameras in the Courtroom, October 26, 2000.” 1 page. (‘Oct. 26, 2000’ file)

Special Committee on Cameras in the Courtroom. “Minutes of Meeting: AT&T Conference Call.” October 10, 2000. 4 pages. (‘Oct. 26, 2000’ file)

"Agenda: (Revised 10-25-00) Special Committee on Cameras in the Courtroom, October 26, 2000." 1 page. ('Oct. 26, 2000' file)

New York State Bar Association to Undertake First-of-its-Kind Comprehensive Nationwide Study on Cameras in Courts. Flyer inviting press club members and working press to attend Oct. 26th New York Press Club Newsmaker Breakfast. 1 page. ('Miscellaneous' file)

"Agenda: Special Committee on Cameras in the Courtroom." 11 a.m. teleconference. Oct. 10, 2000. 1 page. ('Oct. 10, 2000 teleconf.' file)

Special Committee on Cameras in the Courtroom. "Minute: of Meeting; Chemist's Club, NYC." Sept. 26, 2000. 7 pages. ('Sept. 26, 2000' file)

"Agenda: Special Committee on Cameras in the Courtroom" Sept. 26, 2000. 1 page. ('Sept. 26, 2000' file)

"Preliminary List of Issues." Contains list, two e-mails and Md. Camera rules. 4 pages. ('Sept. 26, 2000' file)

Special Committee on Cameras in the Courtroom. Material mailed to committee members for Sept. 26, 2000 meeting. Contains:

- National Center for State Courts. "Summary of TV Cameras in the State Courts. May 1, 1999." <www.ncsc.dni.us/is/clrhouse/tvcams99.htm>. 7 pages.
- "Cameras in Court." Amended rule 980 of the California Rules of Court. January 2000. 3 pages.
- Court Television Network. "Facts and Opinions about Cameras in Courtrooms." July 1995. 34 pages.
- American Bar Association National Conference of Lawyers and Representatives of the Media. "The Reporter's Key: Access to the Judicial Process." Aug. 14, 2000 <www.abanet.org/media/nclm/991c838.html>. 4 pages.
- Office of Management Support. "The Effect of Cameras in the Courtroom: An Interim Report." (Draft: not for publication.) Ferrara, Phillip; Block, Belinda; and Povermo, Lori. Oct. 1990. 21 pages.
- Alaska Judicial Council. Memo to Readers. "News Cameras in the Alaska Courts: Assessing the Impact." Jan. 1988. 76 pages plus appendices.
- California Administrative Office of the Courts Research and Planning Unit. "Cameras in the Courtroom Report on Rule 980." May 2000. 13 pages plus appendices.
- Missouri Supreme Court Task Force on Cameras in the Courtroom. "Final Report." Sept. 13, 1994. 14 pages plus appendices and letters of introduction.
- Radio-Television News Directors Association & Foundation. "Freedom of Information: Summary of State Camera Coverage Rules." <www.rtnda.org/foi/cameras_summary.html>. 1 page. ('Sept. 26, 2000' file)

Federal Bar Council Committee on Second Circuit Courts. Recommendation on "Cameras in Courtrooms" (A Report by the Federal Bar Council Committee on Second Circuit Courts). September 1998. 32-page booklet, 18 physical pages in printout. ('Federal Bar Council Report' file)

Federal Judicial Center. Electronic Media Coverage of Federal Civil Proceedings: An Evaluation of the Pilot Program in Six District courts and Two Courts of Appeals. 1994. 49 pages. ('Federal Judicial Center' file)

Memos:

Carr, Bradley G. Memo to members of the Special Committee on Cameras in the Courtroom. Re: Journalists' Privilege (Shield Law). Enc.: copy of relevant part of Section 79 of the NY Civil Rights Law which contains the Shield Law (subdivision h), and applicable material from McKinneys Cumulative Pocket Part for 2000. 7 pages.

Buzard, A. Vincent. Memo to Members, House of Delegates. Request for names of attorneys and judges with experiences with cameras in the courtroom. Oct. 16, 2000. 1 page. ('Miscellaneous' file)

Buzard, A. Vincent. Memo to Members of the Special Committee on Cameras in the Courtroom. "Interviews." Nov. 7, 2000. 8 pages. ('Nov. 21, 2000 teleconference' file)

Buzard, A. Vincent. Important Notice to Members of the Special Committee on Cameras in the Courtroom. "Meeting." Re: Nov. 10, 21, 29 and Dec. 1 meetings. 2 pages. ('Nov. 10, 2000' file)

Robinson, Juli. Memo to Members of the Special Committee on Cameras in the Courtroom. "Meeting Notice." Sept. 28, 2000. 2 pages. ('Oct. 23, 2000' file)

Carr, Brad. Memo to Members of the Special Committee on Cameras in the Courtroom. "Additional Materials on Cameras in the Courtroom." Oct. 4, 2000. 1 page. ('Oct. 10, 2000 teleconf.' file)

Carr, Brad. Memo to Members of the Special Committee on Cameras in the Courtroom. "Selected Materials on Cameras in the Courtroom." Sept. 19, 2000. 1 page. ('Sept. 26, 2000' file)

Staff Memorandum, NYSBA House of Delegates Agenda Item #9. "Memorandum from the Criminal Justice Section to the Members of the House of Delegates. Audio-visual coverage of criminal proceedings." 2000. 3 pages. ('NYSBA' file)

Staff Memorandum, NYSBA House of Delegates Agenda Item #9. "Requested Action: Consideration of Association position with respect to audio-visual coverage of trial court proceedings," and attached background materials. 2000. 22 pages. ('NYSBA' file)

Carr, Brad. Memo to Cameras in the courtroom file. Nov. 9, 2000. Re: telephone conversation with J.D. Gingerich, Arkansas Administrative Office of the Courts. ('Criminal Consent States' file)

Ciervo, Frank J. Memo to A. Vincent Buzard. "Summary of findings concerning the four states that maintain consent requirements in their rules governing audio-visual coverage of criminal trials." Oct. 4, 2000. 2 pages. ('Criminal Consent States' file)

Memorandum of Courtroom Television Network in Support of Motion to Intervene and For Entry of Order to Permit Televising of Trial (People v. Boss), filed in the Supreme Court, Albany County, Indictment No. 1814/99, 66 pages. Includes the following materials:

- Affidavit of Jonathan Sherman, Esq., in support of the motion.
- Copy of Court TV's "Network News and Editorial Guidelines," updated 12/31/99, 10 pages.
- Excerpt prepared by the Radio-Television News Directors Association, (ca. January 1, 1994), "News Media Coverage of Judicial Proceedings with Cameras and Microphones," 100 pages.
- "Summary of TV Cameras in the State Courts," prepared by the National Center for State Courts, (ca. May 1, 1999), 4 pages..
- Kielbowicz, Richard B., "The Story Behind the Adoption of the Ban on Courtroom Cameras," *Judicature*, Vol. 63, No. 1 (1979), pages 14-23.
- Harris, David A., "The Appearance of Justice: Court TV, Conventional Television, and the Public Understanding of the Criminal Justice System," *35 Arizona Law Review* 785 (1993).
- In re Petition of Post-Newsweek Stations, Inc., 370 So. 2d 764 (Fla. 1979).
- "Report of the Chief Administrative Judge to the Legislature, the Governor, and the Chief Judge of the State of New York on the Effect of Audio-Visual Coverage on the Conduct of Judicial Proceedings," (ca. March 1989), 113 pages plus appendices.
- "Report of the Committee on Audio-Visual Coverage of Court Proceedings," (Hon. Burton B. Roberts, Chair), (ca. May 1994), 106 pages plus appendices.
- "An Open Courtroom: Cameras in New York Courts 1995-97," (Dean John D. Feerick, Chair), April 4, 1997.
- Krafka, Carol, and Johnson, Molly Treadway, Federal Judicial Center, Washington, D.C., "Electronic Media Coverage of Federal Civil Proceedings: An Evaluation of the Pilot Program in Six District and Two Courts of Appeals," 49 pages (1994).
- In re Petition of Post-Newsweek Stations, Inc., 347 So. 2d 404 (Fla. 1977).
- Short, Ernest H. and Associates, Inc., "Evaluation of California's Experiment With Extended Media Coverage of Courts," September 1981, 245 pages plus appendices.
- "Report from the Task Force on Photography, Recording and Broadcasting in Courtroom," California Task Force, February 16, 1996, 30 pages plus appendices.
- Report of the California Task Force, May 10, 1996, 27 pages plus appendices.
- Statement of Hon. James Ford, submitted to the California Task Force (ca.1996), 1 page.
- "News Cameras in the Alaska Courts: Assessing the Impact," (ca. January 1988), 68 pages.
- Baker, Bob, "Cameras and Recorders in Arizona's Trial Courts: An Evaluation of the Experiment," (1983?), 30 pages.
- Cosmos Broadcasting Corp. v. Brown, 471 N.E.2d 874 (Ohio Ct. App. 1984).
- People v. Boss, M7380, M7486 (1st Dept. Dec. 16, 1999), 11 pages.

- Defendants' Motion to Change Venue in the case of People v. Boss, Nov. 8, 1999, 20 pages.
- In re Regional News Network, No. 1814/99 (Sup. Ct. Bronx Co. June 4, 1999), 15 pages.
- In re Clear Channel Communications (Sup. Ct. Albany Co. Mar. 3, 1999), 8 pages.

Prepared Testimonies, Bill Statements:

Assembly Bill A04568 introduced by Assemblyman Mark Weprin, an act to amend the judiciary law in relation to audio-visual coverage of court proceedings. February 12, 2001.

"Prepared Testimony of the Hon. Edward R. Becker, Chief Judge, U.S. Court of Appeals for the Third Circuit on Behalf of the Judicial Conference of the U.S. Before the Senate Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts. Subject – S. 721 'To Allow Media Coverage of Court Proceedings'." Federal News Service, Inc. (Sept. 6, 2000): 6 pages. Sept. 7, 2000 <www.nexis.com/research/search/submitViewTagged>. ('Oct. 10, 2000 teleconf.' file)

106th Congress, 2nd Session, S.3086. "A Bill to permit the televising of Supreme Court proceedings." Fax date: Sept. 27, 2000. 2 pages. ('Specter/Biden Bill to Allow Cameras in U.S. Supreme Court' file)

Senator Specter. "Statements on Introduced Bills and Joint Resolutions (Senate – Sept. 21, 2000). Opening the Supreme Court to Television." 18 pages incl. fax cover page. ('Specter/Biden Bill to Allow Cameras in U.S. Supreme Court' file)

"Cameras in the Courtroom Statement of Lynn D. Wardle in Support of S. 721 Presented on Wednesday, September 6, 2000 to The Senate Judiciary Committee Subcommittee on Administrative Oversight and the Courts." Sept. 11, 2000 <www.senate.gov/~judiciary/962000_ldw.htm>. 6 pages. ('Sen. Charles Grassley's Bill and House Bill for Fed. Cameras' file)

"United States Senate Committee on the Judiciary Sub-Committee on Administrative Oversight and the Courts. Hearings on S. 721. Testimony of Hon. Hiller B. Zobel, Associate Justice, Superior Court Department, Massachusetts Trial Court." Sept. 11, 2000 <www.senate.gov/~judiciary/962000_hbz.htm>. 7 pages. ('Sen. Charles Grassley's Bill and House Bill for Fed. Cameras' file)

"Witness List: Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts. 'S.721 Allowing Cameras and Electronic Media in the Courtroom.' Wednesday, September 6, 2000." Sept. 11, 2000 <www.senate.gov/~judiciary/w1962000.htm>. 2 pages. ('Sen. Charles Grassley's Bill and House Bill for Fed. Cameras' file)

"Prepared testimony of the Hon. Edward R. Becker, Chief Judge, U.S. Court of Appeals for the Third Circuit on Behalf of the Judicial Conference of the United States before the Senate Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts." Federal News Service Sept. 6, 2000. 12 pages. ('Sen. Charles Grassley's Bill and House Bill for Fed.

Cameras' file)

"Prepared statement of Sen. Charles E. Schumer before the Senate Judiciary Committee Administrative Oversight and the Courts Subcommittee. Subject – Hearing on Cameras in the Courtroom." Federal News Service Sept. 6, 2000. 2 pages. ('Sen. Charles Grassley's Bill and House Bill for Fed. Cameras' file)

"Prepared statement of Hon. Hiller B. Zobel, Associate Justice, Superior Court Department, Massachusetts Trial Court before the Senate Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts. Subject – Hearing on S.721." Federal News Service Sept. 6, 2000. 6 pages. ('Sen. Charles Grassley's Bill and House Bill for Fed. Cameras' file)

"Prepared statement of Hon. Nancy Gertner, U.S.D.C. before the Senate Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts. Subject – S.721, 'To Allow Media Coverage of Court Proceedings'." Federal News Service Sept. 6, 2000. 4 pages. ('Sen. Charles Grassley's Bill and House Bill for Fed. Cameras' file)

"Prepared statement of David Busiek, news director, KCCI-TV and director, Radio-Television News Directors Association before the Senate Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts. Subject – S.721, 'To Allow Media Coverage of Court Proceedings'." Federal News Service Sept. 6, 2000. 4 pages. ('Sen. Charles Grassley's Bill and House Bill for Fed. Cameras' file)

Reports, theses, dissertations, questionnaires and analyses:

"Compilation of Telephone Interviews Conducted by the Special Committee on Cameras in the Courtroom." December 2000. 176 pages.

Federal Judiciary Center. "Analysis of TV Coverage of Federal Civil Proceedings." Re: Coding procedures. 44 pages.

Wilson, Leroy, Jr. Interview of Gary Horton on 'questionnaire for interviews about cameras in the courtroom'. 5 pages.

Wilson, Leroy, Jr. Interview of Laurie Shanks on 'questionnaire for interviews about cameras in the courtroom'. 5 pages.

Special Committee on Cameras in the Courtroom. "Draft Report Outline." Jan. 3, 2001. 12 pages.

NYCLA's Task Force on Cameras in the Courtroom. "Interview Report." 30 pages.

Poppell, Beverly. Interview of Hon. Abbey Boklan on questionnaire for interviews about cameras in the courtroom. Dec. 8, 2000. 5 pages.

"Analysis of Response—NYS Bar and County Lawyers." 1 page.

"Analysis of Cameras-in-the-Courtroom Statutes and Rules." 14 pages.

Noisette, Leonard E. "New York State Committee to Review Audiovisual Coverage of Court Proceedings: Minority Report." April 1, 1997. 26 pages. ('Oct. 23, 2000' file)

Litman, Jack T. "Minority Report of the Committee on Audio-Visual Coverage of Court Proceedings." December 1994. Report: 68 pages. Appendices: 12 pages. ('Oct. 23, 2000' file)

Ciervo, Frank. Report to A. Vincent Buzard. "Summary of findings concerning the four states that maintain consent requirements in their rules governing audio-visual coverage of criminal trials." Oct. 4, 2000. 12 pages. ('Oct. 10, 2000 teleconf.' file)

Judicial Council of California Task Force on Photographing, Recording and Broadcasting in the Courtroom. Report from the Task Force on Photographing, Recording and Broadcasting in the Courtroom (Action Required). May 10, 1996. 49 pages. ('Oct. 10, 2000 teleconf.' file)

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"Report of the Committee on Audio-Visual Coverage of Court Proceedings." (The Roberts' study.) May 1994. 7 pages. ('Oct. 10, 2000 teleconf.' file)

Slater, Dan and Hans, Valerie P. "Methodological Issues in the Evaluation of 'Experiments' with Cameras in the Courts." Communication Quarterly Vol. 30, No. 4, Fall 1982: pp. 376-380. ('Methodological Issues in the Evaluation of 'Experiments' with Cameras' file)

Keller, Teresa D. "Cameras in courtrooms: An analysis of television court coverage in Virginia." A dissertation for Univ. of Tenn. May 1992. 303 pages. ('Virginia' file)

Ad Hoc Task Force appointed by the Supreme Court and Judicial Council, Utah. "Video Recordings in the Courtroom." Oct. 28, 1996. 22 pages. ('Utah' file)

Williams, Thomas J. "The Media & The Courts: Access to Information." Faxed by Amy Rosser of the State Bar of Texas—no publication name noted. Faxed Oct. 4, 2000. 10 pages incl. cover sheet. ('Texas' file)

Kleinsasser, Holly Hemmingson. "The Attitudes of South Dakota Judges, State's Attorneys and Bar Attorneys Toward Cameras in Courtrooms in 1993." Master's Thesis for South Dakota State Univ. 1993. 94 pages. ('South Dakota' file)

Horton, Jennifer Jill. "Cameras in South Carolina Courtrooms: A Legal Analysis of South Carolina Appellate Court Rule 605." Master's Thesis for Univ. South Carolina. 1998. 72 pages. ('South Carolina' file)

Supreme Court Task Force on Cameras in the Courtroom (Missouri). "Task Force on Cameras in the Courtroom Final Report." Sept. 13, 1994. 48 pages incl. cover letters and proposed

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Appendix C



New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

SPECIAL COMMITTEE ON CAMERAS IN THE COURTROOM

A. VINCENT BUZARD
Chair
Harris Beach & Wilcox
130 East Main Street
Rochester, NY 14604
Tel 716/232-4440
Fax 716/232-1438
vbuzard@harrisbeach.com

October 5, 2000

Dear Bar Leader:

I am writing to you as Chair of the Special Committee on Cameras in the Courtroom. In June, the NYSBA's House of Delegates, following the recommendations of the Executive Committee, called for formation of a special committee to evaluate and make recommendations on the issue of audio-visual coverage of court proceedings in civil and criminal matters. Whatever the committee recommends, I believe our work will have a significant impact on the ultimate decision regarding cameras in New York courts and you have an opportunity to contribute to our workproduct.

The committee is expected to have its final report and recommendations distributed in time for debate and vote at the House meeting in January. We believe it is essential to glean comments from the constituent bar associations in the state. To that end, we would like to know if you or any of your members have participated firsthand in a televised trial in this state. If so, could you please provide us with the names and phone numbers of any of the lawyers involved and if known, the name of the presiding judge.

I would be greatly appreciative of your efforts to respond to this request in a timely manner by noon October 24, 2000.

Please respond by mail or facsimile to:

Brad Carr
Staff Liaison/Special Committee on Cameras in the Courtroom
New York State Bar Association
One Elk Street
Albany NY 12207
(518) 463-4276 FAX

Thank you.

Sincerely,

A. Vincent Buzard

Appendix D

LIST OF PERSONS INTERVIEWED BY THE COMMITTEE

- 1. Brian Schiffrin, Monroe County Public Defender**
- 2. Edward J. Nowak, Monroe County Public Defender**
- 3. Hon. Vincenza M. Stabile, Supreme Court, Buffalo**
- 4. James E. Reid, Syracuse**
- 5. George Quinlan, Attorney General's Office, Albany**
- 6. Richard W. Rich, Jr., Elmira**
- 7. Robert Latham, Dallas, TX**
- 8. Adrian L. DiLuzio, Mineola**
- 9. William P. Sullivan, Jr., Ithaca**
- 10. Luke Pittoni, New York City**
- 11. Fred Klein, Mineola**
- 12. Judge Ira Wexner, Supreme Court, Mineola**
- 13. John Lawrence, Mineola**
- 14. Salvatore Marinello, Mineola**
- 15. (Former) Judge Alfred Tisch**
- 16. Jeffrey Waller, Hauppauge**
- 17. William Kehon**
- 18. Paul Gianelli, Hauppauge**
- 19. Eric Naiburg, Hauppauge**
- 20. Judge Daniel J. Cotter, County Court, Mineola**
- 21. Judge Wayne A. Freeman, Jr.**
- 22. Judge Dan Lamont, Acting Justice, Supreme Court, Albany**

23. Judge Donald Mark, Supreme Court, Rochester
24. Steven Coffey, Albany
25. Mark Harris, New York State Defender's Office, Albany
26. Judge Joseph Teresi, Supreme Court, Albany
27. Isaiah Gant, New York State Defender's Office, Albany
28. Joseph Marusak, Buffalo
29. Frank Clark, District Attorney, Buffalo
30. Donald Rehkopf, Rochester
31. David Murante, Rochester
32. Jerry Solomon, Rochester
33. James A. Baker, Ithaca
34. John C. Tunney, Bath
35. Judge S. Barrett Hickman, Supreme Court, Carmel
36. John Kase, Garden City
37. Stephen P. Scaring, Garden City
38. Laurie Shanks, Albany
39. Gary Horton, Batavia

Appendix E

**QUESTIONNAIRE FOR INTERVIEWING WITNESSES
IN CAMERAS IN THE COURTROOM PROJECT**

YOUR NAME

1. NAME OF PERSON BEING INTERVIEWED

2. WHAT WERE THE NAMES OF THE CASES, THE TYPE OF CASE AND THE COURT IN WHICH IT WAS HEARD IN WHICH CAMERAS WERE INVOLVED?

3. WHAT PARTS OF THE CASE WERE TELEVISED?

4. DID YOU OPPOSE, CONSENT TO OR TAKE NO POSITION ON THE PRESENCE OF CAMERAS? WHY?

a. WHAT WAS THE RESULT?

5. DID YOU HAVE ANY CASE IN WHICH A WITNESS WAS RELUCTANT TO TESTIFY BECAUSE OF THE PRESENCE OF CAMERAS?

a. DID YOU EXPLAIN THAT PROBLEM TO THE JUDGE IN ADVANCE?

b. DID THE JUDGE PERMIT CAMERAS NOTWITHSTANDING THE PROBLEM?

c. WERE YOU ABLE TO PERSUADE THE WITNESS TO TESTIFY?

d. ARE YOU ABLE TO SEPARATE THE UNWILLINGNESS THE WITNESS EXPRESSED BECAUSE OF THE CAMERAS FROM THE FACT THAT THERE WOULD BE OTHER MEDIA COVERAGE IN AN OPEN COURTROOM WITH A CROWD?

6. DID ANY WITNESS IN CASES INVOLVING CAMERAS BECOME MORE NERVOUS TO THE POINT THAT THE NERVOUSNESS AFFECTED HIS TESTIMONY? IF SO, HOW?

a. WAS YOUR CASE AFFECTED?

7. IN ANY CASES INVOLVING CAMERAS, DID THE WITNESS BECOME MORE GUARDED OR LESS HELPFUL IN HIS TESTIMONY?

a. DID YOU EXPLAIN THAT PROBLEM TO THE JUDGE IN ADVANCE AND WHAT WAS THE JUDGE'S RULING?

b. IN THE CASES WHERE YOU HAD WITNESSES SUBJECT TO NERVOUSNESS OR DISTRACTION, OR WHO WERE RELUCTANT TO TESTIFY, DID YOU ASK THAT THE WITNESS' FACE BE OBLITERATED OR OBSCURED?

c. DID OBLITERATION WORK AND DID IT MAKE THE WITNESS FEEL MORE COMFORTABLE?

8. WERE THERE ANY WITNESSES OR PARTIES WHO HAD PERSONALLY EMBARRASSING INFORMATION DISCLOSED ON TELEVISION?

a. WHAT INFORMATION?

b. HOW DID YOU HANDLE IT?

9. DID YOU FIND OBTAINING JURORS ANY MORE DIFFICULT BECAUSE OF CAMERAS IN THE COURT?

10. WERE JURORS DISTRACTED IN ANY OF YOUR CASES? PLEASE SPECIFY HOW YOU KNOW?

11. IN ANY OF YOUR CASES, WAS THE OUTCOME OF THE CASE AFFECTED BY THE PRESENCE OF CAMERAS.

12. WHAT WAS YOUR POSITION WITH REGARD TO CAMERAS BEFORE THE COMMENCEMENT OF THE TRIAL?

13. DID THE CONDUCT OF THE TRIAL IN ANY WAY CHANGE YOUR OPINION AFTER THE TRIAL?

14. IN ANY OF YOUR CASES, DID YOU BECOME AWARE OF ANY INSTANCES IN WHICH WITNESSES WATCHED THE TRIAL PROCEEDING BEFORE THEY TESTIFIED, CONTRARY TO A COURT ORDER?

15. DID YOU BECOME AWARE OF ANY INSTANCE IN WHICH A JUROR OR FRIEND OF A JUROR WATCHED ANY PORTION OF THE TRIAL?

16. WERE THERE ANY OTHER SPECIFIC INSTANCES IN WHICH CAMERAS ADVERSELY AFFECTED THE TRIAL? EXPLAIN WITH SPECIFICS.

Appendix F

ANALYSIS OF CAMERAS-IN-THE-COURTROOM STATUTES AND RULES

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
ALABAMA			Parties and attorneys must consent to cameras at the proceeding; prohibits coverage of a witness if that witness objects.				Appears to permit cameras only in Court of Criminal Appeals (but to trials).	Court to suspend coverage of any witness if witness objects
ALASKA		X	Consent required for matrimonial and domestic matters.	Excludes filming of victims of sexual offenses.	X			Prohibited only if necessary "to ensure the fair administration of justice."
ARIZONA		X		No coverage of juvenile court proceedings.	In the sole discretion of the judge, after consideration of: (i) impact on the right to a fair trial; (ii) impact upon the right of privacy of any party or witness; (iii) impact upon safety and well-being of any party, witness or juror; (iv) likelihood of distraction; (v) adequacy			Judge may limit coverage of a particular witness if, in its sole discretion, coverage would have a greater adverse impact than non-electronic, non-photographic coverage. Judge may exercise sole discretion to exclude considering: 1) impact of coverage upon the right to a fair trial; 2) impact of coverage upon right of privacy of any party or witness; 3) impact of coverage upon safety of any party,

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					of physical facilities or other factors.			juror or witness.
ARKANSAS		X	Objection by parties, attorneys and witnesses shall preclude coverage.	Juvenile division, domestic relations, jurors, minors (without parental consent), victims of sexual offenses, undercover officers.	X			
CALIFORNIA		X			X			Court should consider list of factors in determining whether to provide access to cameras
COLORADO		X ("close-ups")		Voir Dire	X	No pretrial hearings (Boulder County allows)		Court may refuse or limit to preserve dignity or to protect the parties, witnesses or jurors.
CONNECTICUT		X		Family relations matters, trade secrets, sexual offenses.	X			In considering objection of participant (party, witness or lawyer), court will consider whether protection of identity is desirable in the interests of justice, such as victims of informants, juveniles and will give great weight to requests where the

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
								protection of the identity of the person is desirable.
DELAWARE	X-Family Court and Superior Court					X		
DISTRICT OF COLUMBIA	X							
FLORIDA					X			
GEORGIA				In juvenile proceedings, the child may not be photographed.	X			
HAWAII		X		Presumption of good cause to exclude cameras for testimony of child witnesses; testimony of victim of sexual offense; no access to closed proceedings (juvenile, adoption, abuse and neglect)	X (for all but Appellate)		X	"Good cause," including certain types of cases and "substantial jeopardy of serious bodily injury" or undercover.
IDAHO		X		No coverage of closed proceedings, including, inter alia parental termination.	X			"interests of the administration of justice"; for a particular participant, may

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
								prohibit or conceal if "a substantial adverse impact upon" the individual. (Note: expected that judge will exercise "particular sensitivity: to crime victims.
ILLINOIS				Supreme and Appellate courts permitted only.	X	X – only permits appellate coverage	X	
INDIANA	X-For preservation of testimony, law school investitive, ceremonial, naturalization, or with completion of proceeding and appeals, for instructional purposes.			Permits coverage of appellate proceedings in Supreme Court				
IOWA		X (except return of verdict or if "unavoidable")	Sexual abuse victims, witnesses; juvenile, marriage dissolution, adoption, or custody cases (unless parties consent) or trade secret cases.		Canon 3			To be granted, unless judge determines that coverage "would materially interfere with the rights of the parties to a fair trial." Witness may object for good cause; certain cases

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Circumstances
								have rebuttable presumption of good cause.
KANSAS		X	If participant objects, in divorce, trade secrets, suppression hearings, or if a juvenile witness or victims or witnesses of crimes, informants, undercover witnesses object		X			
KENTUCKY					X			
LOUISIANA	Appellate proceedings may be filmed; upon motion and stipulation of all parties, other proceedings may be televised or recorded with court approval; Canon 3 limits further access to ceremonial, naturalization and investitive proceedings, or		Unless otherwise provided, permits televising or recording of trial level proceedings only upon motion and stipulation agreed to by all parties and approved by the judge		X and Canon 3		Permits coverage of appellate proceedings; parties may object and court may limit or prohibit.	

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
	upon consent by all parties and witnesses, for educational purposes after the conclusion of the							
MAINE		X	Election to exclude may be exercised by persons with handicaps or disabilities, victims or crimes, persons at sentencing on behalf of victim or defendant.	Excludes domestic, matrimonial, family; where child is "a principal subject"; sexual assault or misconduct; trade secrets; or coverage of child.		Limits to arraignments, sentencing and other non-testimonial proceedings.		Court has discretion to exclude coverage of any person.
MARYLAND		X	All parties must consent, except for governmental parties and witnesses for coverage at the trial level.			Excludes	X - No consent required of the parties	
MASSACHUSETTS		X (usually)		Excludes probable cause, voir dire, suppressions	X			"Substantive likelihood of harm to any person or other serious harmful consequence."
MICHIGAN		X			X			Judge may exclude coverage of certain witnesses, including victims of sex crimes and their families, undercover, informants and where the "fair

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
								administration of justice requires."
MINNESOTA	Canon 3 – Except for appellate proceedings, access limited to investigative, ceremonial, naturalization or for educational institutions and inter-active facility for mental illness commitment proceedings. Permits filming for instructional purposes if all parties and witnesses agree and film will not be shown until proceedings and appeals are concluded		Experimental program 1983 until 1999, upon consent of parties, judge, any witnesses may object. Not clear whether program is still in effect.	Experimental program prohibits coverage of child custody, divorce, juvenile, suppression, sex crimes, undercover, witnesses.			X	
MISSISSIPPI	X							

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
MISSOURI		X	Permits objections by victims, informants, undercover, juveniles, relocated witnesses.	Excludes juvenile, adoption, domestic relations or child custody.	X	No coverage until the defendant is represented by counsel or waives such representation.		Court may exclude upon objection of any participant "for good cause" and requires notice of right to object to be given witnesses. Allows exclusion where coverage "would materially interfere with the rights of the parties to a fair trial."
MONTANA	X - in federal court.							No statute or rule governing access to state courts
NEBRASKA							X - only	Party may object, to be decided by court. Court may exclude where coverage "would materially interfere with the rights of the parties to a fair trial" or "substantial rights of individual participant" will be prejudiced.
NEVADA					X			

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
NEW HAMPSHIRE		X			X			May exclude upon own motion or motion of any attorney, party or witness. Requires television cameras and personnel to be obscured from the view of the jury.
NEW JERSEY					Canon 3 permits "only in accordance with the guidelines of the Supreme Court."			
NEW MEXICO		X		Decision of court to exclude coverage of witnesses, including victims of sex crimes, and their families, informants, undercover, relocated witnesses and juveniles.				Right of court to limit or deny coverage "for good cause", "deleterious effect on the paramount right of the defendant to a fair trial." Party may object, to be resolved by trial judge, who is to state the reasons.
NEW YORK	X						X	
NORTH CAROLINA		X		Prohibits coverage of adoption, juvenile, probable cause, suppression, custody, divorce, trade secrets,				Canon 3 - Judge should exercise discretion with regard to cameras.

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
				along with coverage of informants, minors, undercover, relocated witnesses and victims of sex crimes and their families.				
NORTH DAKOTA		X		Judge may deny coverage including testimony of an adult victim or witness of a sex crime unless victim or witness consents; or undercover and relocated witnesses.	X			Excluded for good cause or where Court finds coverage would materially interfere with a party's right to a fair trial. Good cause for exclusion means having a substantial impact on the objector which is qualitatively different from the effect on the general public and from coverage by other types of media.
OHIO			No filming of victims or witnesses who object		X			Canon 3: The judge shall grant requests for coverage.
OKLAHOMA	X-Tulsa County		No broadcast or filming of any witness, juror or party who objects.		X	Only with consent of all accused persons.		Canon 3 permits cameras as permitted by the individual judge.

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
OREGON		X		Dissolution, juvenile, paternity, adoption, mental commitment, trade secrets, abuse, restraining, stalking order, sex offense proceedings at the victim's request.	X			May terminate or deny coverage only upon findings of fact that public access coverage would interfere with the rights of the parties to a fair trial or would affect the presentation of evidence or outcome. Coverage of a witness may be denied if public access coverage would endanger the welfare of the witness or materially hamper the witness' testimony.
PENNSYLVANIA	X, except for investigative, naturalization, ceremonial or preservation or non-jury civil trials, with the consent of parties and witnesses.		In non-jury civil trials, parties and witnesses must consent to being filmed.	Excludes support, custody and divorce proceedings	X	X		
RHODE ISLAND		X, except with consent.			X			Judge has sole discretion to prohibit recording on motion or request of participant.

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
SOUTH CAROLINA		X			Notice required.			"As may be required in the interests of justice."
TENNESSEE		X	In juvenile court proceedings, accused, parties and witnesses may object. Prohibits coverage of minors who are witnesses, parties or victims.		X			Requires an evidentiary hearing and a finding that: exclusion or limitation is necessary to: (i) control the conduct of the proceedings; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness or juror; or (iv) prevent fair administrative justice of the pending case.
TEXAS			Parties must consent; witnesses must consent as well				X	Court may limit coverage of appellate proceedings for "any reason the court considers necessary or appropriate, such as protecting the parties' rights or the dignity of the court and ensuring the orderly conduct of the proceedings." Trial court coverage

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
								permitted in accordance with rules.
UTAH	X - to preserve the record or to an overflow room.	X - before the person is dismissed.			X for still photography video and audio recording permitted only to preserve the record of the proceedings)			Still photography may be limited if it would jeopardize the right to a fair hearing or trial of the privacy interests of the victim of a crime, party in a civil case or witness outweigh the public interest in a access to a photograph of the person.
VERMONT		X-Unless impossible, in which case closeups of individuals are prohibited.						Judge may prohibit, limit or terminate upon its motion or the request of parties or witness, after a prompt hearing. Judge shall consider: (1) impact of recording upon a fair trial; (2) likelihood that juror, witness or victim will not perform his function or will avoid their obligation to and appear, even if under subpoena; (3) whether the private nature of testimony

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
								outweighs its public value; (4) likelihood of physical, emotional, economic or proprietary injury; (5) age, mental and medical condition of party, witness or victim; (6) reasonable wishes of party, witness, victim, next of kin; (7) whether sequestration, delayed broadcast (if media agrees) or other means would protect interests.
VIRGINIA		X		Adoption, juvenile proceedings, custody, divorce, sexual offenses, suppression, trade secrets prohibited. Prohibits coverage of police informants, minors, undercover agents, victims and families of victims of sexual offenses.				Judge may prohibit coverage for good cause to meet the ends of justice.
WASHINGTON					X			"Media will not distract participants or impact the dignity of the proceedings."

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
WEST VIRGINIA		Only with prior approval of presiding officer.			X			Court may limit if determined coverage will impede justice or deny any party a fair trial.
WISCONSIN		X except with consent.			X (requires advance approval of equipment)			Party, witness or counsel may object and presiding officer shall rule. Trial judge may prohibit for cause recording or photographing participant, presumption of validity of request for exclusion for victim,, informants, undercover agents, relocated witnesses, juvenile, trade secrets, divorce and suppression. List is not exhaustive and judge shall express broad discretion.
WYOMING		X			X			Judge may exclude for cause: presumption of validity of objection for victims, informants, undercover and suppression hearing Judge shall exercise broad discretion and the list is not exhaustive; court may find cause in

State	No or Limited Camera Access	Prohibits Coverage of Jurors	Consent/ Objections Which Preclude Coverage	Permits, Limited to or Excludes Certain Courts or Proceedings	Approval of Court Required	Excludes or Limits Coverage of Criminal Trials	Appellate Coverage	May be Limited or Excluded Upon Certain Conditions
								comparable situations.

Appendix G

§ 218. Audio-visual coverage of judicial proceedings

1. **Authorization.** Notwithstanding the provisions of section fifty-two of the civil rights law and subject to the provisions of this section, the chief judge of the state or his designee may authorize an experimental program in which presiding trial judges, in their discretion, may permit audio-visual coverage of civil and criminal court proceedings, including trials.

2. **Definitions.** For purposes of this section:

(a) "Administrative judge" shall mean the administrative judge of each judicial district; the administrative judge of Nassau county or of Suffolk county; the administrative judge of the civil court of the city of New York or of the criminal court of the city of New York; or the presiding judge of the court of claims.

(b) "Audio-visual coverage" shall mean the electronic broadcasting or other transmission to the public of radio or television signals from the courtroom, the recording of sound or light in the courtroom for later transmission or reproduction, or the taking of still or motion pictures in the courtroom by the news media.

(c) "News media" shall mean any news reporting or news gathering agency and any employee or agent associated with such agency, including television, radio, radio and television networks, news services, newspapers, magazines, trade papers, in-house publications, professional journals or any other news reporting or news gathering agency, the function of which is to inform the public, or some segment thereof.

(d) "Presiding trial judge" shall mean the justice or judge presiding over proceedings at which audio-visual coverage is authorized pursuant to this section.

(e) "Covert or undercover capacity" shall mean law enforcement activity involving criminal investigation by peace or police officers who usually and customarily wear no uniform, badge, or other official identification in public view.

(f) "Arraignment" shall have the same meaning as such term is defined in subdivision nine of section 1.20 of the criminal procedure law.

(g) "Suppression hearing" shall mean a hearing on a motion made pursuant to the provisions of section 710.20 of the criminal procedure law, a hearing on a motion to determine the admissibility of any prior criminal, vicious or immoral acts of a defendant and any other hearing held to determine the admissibility of evidence.

(h) "Nonparty witness" shall mean any witness in a criminal trial proceeding who is not a party to such proceeding; except an expert or professional witness, a peace or police officer who acted in the course of his or her duties and was not acting in a covert or undercover capacity in connection with the instant court proceeding, or any government official acting in an official capacity, shall not be deemed to be a "nonparty witness".

(i) "Visually obscured" shall mean that the face of a participant in a criminal trial proceeding shall either not be shown or shall be rendered visually unrecognizable to the viewer of such proceeding by means of special editing by the news media.

3. Requests for coverage of proceedings; administrative review.

(a) Prior to the commencement of the proceedings, any news media interested in providing audio-visual coverage of court proceedings shall file a request with the presiding trial judge, if assigned, or if no assignment has been made, to the judge responsible for making such assignment. Requests for audio-visual coverage shall be made in writing and not less than seven days before the commencement of the judicial proceeding, and shall refer to the individual proceeding with sufficient identification to assist the presiding trial judge in considering the request. Where circumstances are such that an applicant cannot reasonably apply seven or more days before the commencement of the proceeding, the presiding trial judge may shorten the time period for requests.

(b) Permission for news media coverage shall be at the discretion of the presiding trial judge. An order granting or denying a request for audio-visual coverage of a proceeding shall be in writing and shall be included in the record of such proceeding. Such order shall contain any restrictions imposed by the judge on the audio-visual coverage and shall contain a statement advising the parties that any violation of the order is punishable by contempt pursuant to article nineteen of this chapter. Such order for initial access shall be subject only to review by the appropriate administrative judge; there shall be no further judicial review of such order or determination during the pendency of such proceeding before such trial judge. No order allowing audio-visual coverage of a proceeding shall be sealed.

(c) Subject to the provisions of subdivision seven of this section, upon a request for audio-visual coverage of court proceedings, the presiding trial judge shall, at a minimum, take into account the following factors: (i) the type of case involved; (ii) whether such coverage would cause harm to any participant in the case or otherwise interfere with the fair administration of justice, the advancement of a fair trial or the rights of the parties; (iii) whether any order directing the exclusion of witnesses from the courtroom prior to their testimony could be rendered substantially ineffective by allowing audio-visual coverage that could be viewed by such witnesses to the detriment

of any party; (iv) whether such coverage would interfere with any law enforcement activity; or (v) involve lewd or scandalous matters.

(d) A request for audio-visual coverage made after the commencement of a trial proceeding in which a jury is sitting shall not be granted unless, (i) counsel for all parties to the proceeding consent to such coverage, or (ii) the request is for coverage of the verdict and/or sentencing in such proceeding.

4. Supervision of audio-visual coverage; mandatory pretrial conference; judicial discretion.

(a) Audio-visual coverage of a court proceeding shall be subject to the supervision of the presiding trial judge. In supervising audio-visual coverage of court proceedings, in particular any which involve lewd or scandalous matters, a presiding trial judge shall, where necessary for the protection of any participant or to preserve the welfare of a minor, prohibit all or any part of the audio-visual coverage of such participant, minor or exhibit.

(b) A pretrial conference shall be held in each case in which audio-visual coverage of a proceeding has been approved. At such conference the presiding trial judge shall review, with counsel and the news media who will participate in the audio-visual coverage, the restrictions to be imposed. Counsel shall convey to the court any concerns of prospective witnesses with respect to audio-visual coverage.

(c) There shall be no limitation on the exercise of discretion under this subdivision except as provided by law. The presiding trial judge may at any time modify or reverse any prior order or determination.

5. Consent. (a) Audio-visual coverage of judicial proceedings, except for arraignments and suppression hearings, shall not be limited by the objection of counsel, parties, or jurors, except for a finding by the presiding trial judge of good or legal cause.

(b) Audio-visual coverage of arraignments and suppression hearings shall be permitted only with the consent of all parties to the proceeding; provided, however, where a party is not yet represented by counsel consent may not be given unless the party has been advised of his or her right to the aid of counsel pursuant to subdivision four of section 170.10 or 180.10 of the criminal procedure law and the party has affirmatively elected to proceed without counsel at such proceeding.

(c) Counsel to each party in a criminal trial proceeding shall advise each nonparty witness that he or she has the right to request that his or her image be visually obscured during said witness' testimony, and upon such request the presiding trial judge shall order the news media to visually obscure the visual image of the witness in any and all audio-visual coverage of the judicial proceeding.

6. Restrictions relating to equipment and personnel; sound and light criteria. Where audio-visual coverage of court proceedings is authorized pursuant to this section, the following restrictions shall be observed:

(a) Equipment and personnel:

(i) No more than two electronic or motion picture cameras and two camera operators shall be permitted in any proceeding.

(ii) No more than one photographer to operate two still cameras with not more than two lenses for each camera shall be permitted in any proceeding.

(iii) No more than one audio system for broadcast purposes shall be permitted in any proceeding. Audio pickup for all media purposes shall be effectuated through existing audio systems in the court facility. If no technically suitable audio system is available, microphones and related wiring essential for media purposes shall be supplied by those persons providing

audio-visual coverage. Any microphones and sound wiring shall be unobtrusive and located in places designated by the presiding trial judge.

(iv) Notwithstanding the provisions of subparagraphs (i), (ii) and (iii) of this paragraph, the presiding trial judge may modify his original order to increase or decrease the amount of equipment that will be permitted into a courtroom on a finding of special circumstances so long as it will not impair the dignity of the court or the judicial process.

(v) Notwithstanding the provisions of subparagraphs (i), (ii) and (iii) of this paragraph, the equipment authorized therein shall not be admitted into a court proceeding unless all persons interested in providing audio-visual coverage of such proceedings shall have entered into pooling arrangements for their respective groups. Furthermore, a pool operator for the electronic and motion picture media and a pool operator for the still photography media shall be selected, and procedures for cost sharing and dissemination of audio-visual material established. The court shall not be called upon to mediate or resolve any disputes as to such arrangements. In making pooling arrangements, consideration shall be given to educational users' needs for full coverage of entire proceedings.

(b) Sound and light criteria:

(i) Only electronic and motion picture camera, audio equipment and still camera equipment which do not produce distracting sound or light shall be employed to cover judicial proceedings. The chief administrator of the courts shall promulgate a list of acceptable equipment models.

(ii) No motorized drives shall be permitted, and no moving lights, flash attachments, or sudden lighting changes shall be permitted during judicial proceedings.

(iii) No light or signal visible or audible to trial participants shall be used on any equipment during audio-visual coverage to indicate whether it is operating.

(iv) It shall be the affirmative duty of any person desiring to use equipment other than that authorized by the chief administrator to demonstrate to the presiding trial judge, adequately in advance of any proceeding, that the equipment sought to be utilized meets acceptable sound and light criteria. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.

(v) With the concurrence of the presiding trial judge modifications and additions may be made to light sources existing in the facility, provided such modifications or additions are installed and maintained at the expense of the news media who are providing audio-visual coverage and provided they are not distracting or otherwise offensive.

(c) Location of equipment and personnel. Camera, equipment and personnel shall be positioned in locations designated by the presiding trial judge. All audio-visual coverage operators shall assume their assigned fixed position within the designated area and once established in such position, shall act in a manner so as not to call attention to their activities.

(ii) The areas so designated shall provide reasonable access to coverage with the least possible interference with court proceedings. Equipment that is not necessary for audio-visual coverage from inside the courtroom shall be located in an area outside the courtroom.

(d) Movement of equipment during proceedings. Equipment shall not be placed in, moved about or removed from the courtroom, and related personnel shall not move about the courtroom, except prior to commencement or after

adjournment of proceedings each day, or during a recess. Camera film and lenses shall be changed only during a recess in proceedings.

7. **Restrictions on audio-visual coverage.** Notwithstanding the initial approval of a request for audio-visual coverage of any court proceeding, the presiding trial judge shall have discretion throughout the proceeding to revoke such approval or limit such coverage, and may where appropriate exercise such discretion to limit, restrict or prohibit audio or video broadcast or photography of any part of the proceeding in the courtroom, or of the name or features of any participant therein. In any case, audio-visual coverage shall be limited as follows:

(a) no audio pickup or audio broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding trial judge, shall be permitted without the prior express consent of all participants in the conference;

(b) no conference in chambers shall be subject to audio-visual coverage;

(c) no audio-visual coverage of the selection of the prospective jury during voir dire shall be permitted;

(d) no audio-visual coverage of the jury, or of any juror or alternate juror, while in the jury box, in the courtroom, in the jury deliberation room during recess, or while going to or from the deliberation room at any time shall be permitted; provided, however, that, upon consent of the foreperson of a jury, the presiding trial judge may, in his or her discretion, permit audio coverage of such foreperson delivering a verdict;

(e) no audio-visual coverage shall be permitted of a witness, who as a peace or police officer acted in a covert or undercover capacity in connection with the instant court proceeding, without the prior written consent of such witness;

(f) no audio-visual coverage shall be permitted of a witness, who as a peace or police officer is currently engaged in a covert or undercover capacity, without the prior written consent of such witness;

(g) no audio-visual coverage shall be permitted of the victim in a prosecution for rape, sodomy, sexual abuse or other sex offense under article one hundred thirty or section 255.25 of the penal law; notwithstanding the initial approval of a request for audio-visual coverage of such a proceeding, the presiding trial judge shall have discretion throughout the proceeding to limit any coverage which would identify the victim, except that said victim can request of the presiding trial judge that audio-visual coverage be permitted of his or her testimony, or in the alternative the victim can request that coverage of his or her testimony be permitted but that his or her image shall be visually obscured by the news media, and the presiding trial judge in his or her discretion shall grant the request of the victim for the coverage specified;

(h) no audio-visual coverage of any arraignment or suppression hearing shall be permitted without the prior consent of all parties to the proceeding; provided, however, where a party is not yet represented by counsel consent may not be given unless the party has been advised of his or her right to the aid of counsel pursuant to subdivision four of section 170.10 or 180.10 of the criminal procedure law and the party has affirmatively elected to proceed without counsel at such proceeding;

(i) no judicial proceeding shall be scheduled, delayed, reenacted or continued at the request of, or for the convenience of the news media;

(j) no audio-visual coverage of any participant shall be permitted if the presiding trial judge finds that such coverage is liable to endanger the safety of any person;

(k) no audio-visual coverage of any judicial proceedings which are by law closed to the public, or which may be closed to the public and which have been closed by the presiding trial judge shall be permitted; and

(l) no audio-visual coverage shall be permitted which focuses on or features a family member of a victim or a party in the trial of a criminal case, except while such family member is testifying. Audio-visual coverage operators shall make all reasonable efforts to determine the identity of such persons, so that such coverage shall not occur.

8. **Violations.** Any violation of an order or determination issued under this section shall be punishable as a contempt pursuant to article nineteen of this chapter.

9. **Review committee.** (a) There shall be created a committee to review audio-visual coverage of court proceedings. The committee shall consist of twelve members, three to be appointed by the governor, three to be appointed by the chief judge of the courts, two to be appointed by the majority leader of the senate, two to be appointed by the speaker of the assembly, one to be appointed by the minority leader of the senate and one to be appointed by the minority leader of the assembly. The chair of the committee shall be appointed by the chief judge of the courts. At least one member of the committee and no more than two members of the committee shall be a representative of the broadcast media, be employed by the broadcast media, or receive compensation from the broadcast media. At least two members of the committee shall be members of the bar, engaged in the practice of law, and regularly conduct trials and/or appellate arguments; and at least one member of the committee shall by professional training and expertise be qualified to evaluate and analyze research methodology relevant to analyzing the impact and effect of audio-visual coverage of judicial proceedings. No one who has served on an earlier committee established by law to review audio-visual coverage of judicial proceedings in New York state may be appointed to such committee. No member or employee of the executive, legislative, or judicial branches of the state government may be appointed to such committee.

(b) The members of the committee shall serve without compensation for their services as members of the committee, except that each of the nonpublic members of the committee may be allowed the necessary and actual travel, meals and lodging expenses which he or she shall incur in the performance of his or her duties under this section. Any expenses incurred pursuant to this section shall be a charge against the office of court administration.

(c) The committee shall have the power, duty and responsibility to evaluate, analyze, and monitor the provisions of this section. The office of court administration and all participants in proceedings where audio-visual coverage was permitted, including judges, attorneys and jurors, shall cooperate with the committee in connection with the review of the impact of audio-visual coverage on such proceedings. The committee shall request participation and assistance from the New York state bar association and other bar associations. The committee shall issue a report to the legislature, the governor, and the chief judge evaluating the efficacy of the program and whether any public benefits accrue from the program, any abuses that occurred during the program, and the extent to which and in what way the conduct of participants in court proceedings changes when audio-visual coverage is present. The committee shall expressly and specifically analyze and evaluate the degree of compliance by trial judges and the media with the provisions of this section and the effect of audio-visual coverage on the conduct of trial judges both inside and outside the courtroom. Such report shall be submitted to the legislature, the governor and the chief judge by January thirty-first, nineteen hundred ninety-seven.

10. Rules and regulations. The chief administrator shall promulgate appropriate rules and regulations for the implementation of the provisions of this section after affording all interested persons, agencies and institutions an opportunity to review and comment thereon. Such rules and regulations shall include provisions to ensure that audio-visual coverage of trial proceedings shall not interfere with the decorum and dignity of courtrooms and court facilities.

11. Duration. The provisions of this section shall be of no force and effect after June thirtieth, nineteen hundred ninety-seven.

(Added L.1992, c. 187, § 1; amended L.1992, c. 274, § 1; L.1993, c. 348, § 1; L.1995, c. 8, § 1.)

Historical and Statutory Notes

1995 Amendments. Subd. 9, par. (a). L.1995, c. 8, § 1, eff. Jan. 31, 1995, substituted reference to chief judge for reference to chief administrator in 2 places; substituted provisions requiring 1 or 2 committee members be representatives of, employed by, or paid by broadcast media, for provisions requiring at least 1 committee member be representative of broadcast news media; and added provisions requiring 2 practicing litigators and 1 qualified research analyst on committee, and prohibiting appointment of former committee members and members or employees of state government.

Subd. 9, par. (c). L.1995, c. 8, § 1, eff. Jan. 31, 1995, made request of bar assistance mandatory; substituted provisions regarding report evaluating program's efficacy, public benefits, abuses, and effect on participants, for provisions regarding recommendations as to efficacy of program and desirability of its continuation; required express and specific analysis and evaluation of compliance and effect on judges' conduct; and substituted due date of Jan. 31, 1997 for due date of Nov. 30, 1994.

Subd. 11. L.1995, c. 8, § 1, eff. Jan. 31, 1995, delayed expiration until June 30, 1997 from Jan. 31, 1995.

1993 Amendments. Subd. 9, par. (b). L.1993, c. 348, § 1, prohibited the sealing

of orders allowing audio-visual coverage. For effective date, see note below.

1992 Amendments. Subd. 7, par. (b). L.1992, c. 274, § 1, eff. June 23, 1992, omitted exception authorizing victim to request judge to permit audio-visual coverage of his or her testimony, either with or without obscuring of victim's image, in court's discretion.

Effective Date of Amendment by L.1993, c. 348; Application; Expiration Unaffected. L.1993, c. 348, § 2, eff. July 21, 1993, provided: "This act (amending this section) shall take effect immediately (July 21, 1993) and shall apply to all proceedings commenced on and after such effective date; provided, however that the amendment to section 218 of the judiciary law made by section one of this act shall not affect the expiration of such section 218 and shall be deemed to expire therewith."

Effective Date. Section effective June 23, 1992, pursuant to L.1992, c. 187, § 1.

Derivation. Former § 218, added L.1987, c. 113, § 2; amended L.1989, c. 116, §§ 1 to 8; repealed L.1992, c. 187, § 1.

Short Title. This section is popularly known as the "cameras in the courtroom law".

New York Codes, Rules and Regulations

Audio-visual coverage of judicial proceedings, see 22 NYCRR 131.1 et seq., set out in McKinney's New York Rules of Court Pamphlet [N.Y.Ct.Rules 131.1 et seq.].
Electronic Recording and audio-visual coverage of court proceedings, see 22 NYCRR 29.1 et seq., set out in McKinney's New York Rules of Court Pamphlet [N.Y.Ct.Rules 29.1 et seq.].

Videotape recording of civil depositions—

Court of claims, see 22 NYCRR 206.11, set out in McKinney's New York Rules of Court Pamphlet [N.Y.Ct.Rules 206.11].

Supreme court and county court, see 22 NYCRR 202.15, set out in McKinney's New York Rules of Court Pamphlet [N.Y.Ct.Rules 202.15].

Appendix H

PART 131

AUDIO-VISUAL COVERAGE OF JUDICIAL PROCEEDINGS

(Statutory authority: Judiciary Law, § 218)

Sec.	
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Historical Note

Part (§ 131.1) filed July 14, 1986; renum. Part 133, now (§§ 131.1-131.13) filed Dec. 2, 1987 eff. Dec. 1, 1987.

§ 131.1 Purpose; general provisions.

(a) These rules are promulgated to comport with the legislative finding that an enhanced public understanding of the judicial system is important in maintaining a high level of public confidence in the Judiciary, and with the legislative concern that cameras in the courts be compatible with the fair administration of justice.

(b) These rules shall be effective for any period when audio-visual coverage in the trial courts is authorized by law and shall apply in all counties in the State.

(c) Nothing in these rules is intended to restrict any preexisting right of the news media to appear at and to report on judicial proceedings in accordance with law.

(d) Nothing in these rules is intended to restrict the power and discretion of the presiding trial judge to control the conduct of judicial proceedings.

(e) No judicial proceeding shall be scheduled, delayed, reenacted or continued at the request of, or for the convenience of, the news media.

(f) In addition to their specific responsibilities as provided in these rules, all presiding trial judges and all administrative judges shall take whatever steps are necessary to insure that audio-visual coverage is conducted without disruption of court activities, without detracting from or interfering with the dignity or decorum of the court, courtrooms and court facilities, without compromise of the safety of persons having business before the court, and without adversely affecting the administration of justice.

Historical Note

Sec. filed July 14, 1986; renum. 133.1, now filed Dec. 2, 1987; amda. filed: Oct. 17, 1989; Nov. 12, 1992; March 23, 1995 eff. March 23, 1995. Amended (b).

§ 131.2 Definitions.

For purposes of this Part:

(a) *Administrative judge* shall mean the administrative judge of each judicial district; the administrative judge of Nassau County or of Suffolk County; the administrative judge of the Civil Court of the City of New York, the Criminal Court of the City of New York or the Family Court of the City of New York; or the presiding judge of the Court of Claims.

(b) *Audio-visual coverage or coverage* shall mean the electronic broadcasting or other transmission to the public of radio or television signals from the courtroom, the recording of sound or light in the courtroom for later transmission or reproduction, or the taking of still or motion pictures in the courtroom by the news media.

(c) *News media* shall mean any news-reporting or news-gathering agency and any employee or agent associated with such agency, including television, radio, radio and television networks, news services, newspapers, magazines, trade papers, in-house publications, professional journals, or any other news-reporting or news-gathering agency, the function of which is to inform the public or some segment thereof.

(d) *Presiding trial judge* shall mean the justice or judge presiding over judicial proceedings at which audio-visual coverage is authorized pursuant to this Part.

(e) *Covert or undercover capacity* shall mean law enforcement activity involving criminal investigation by peace officers or police officers who usually and customarily wear no uniform, badge or other official identification in public view.

(f) *Judicial proceedings* shall mean the proceedings of a court or a judge thereof conducted in a courtroom or any other facility being used as a courtroom.

(g) *Child* shall mean a person who has not attained the age of 16 years.

(h) *Arraignment* shall have the same meaning as such term is defined in subdivision nine of section 1.20 of the Criminal Procedure Law.

(i) *Suppression hearing* shall mean a hearing on a motion made pursuant to the provisions of section 710.20 of the Criminal Procedure Law; a hearing on a motion to determine the admissibility of any prior criminal, vicious or immoral acts of a defendant; and any other hearing held to determine the admissibility of evidence.

(j) *Nonparty witness* shall mean any witness in a criminal trial proceeding who is not a party to such proceeding; except an expert or professional witness, a peace or police officer who acted in the course of his or her duties and was not acting in a covert or undercover capacity in connection with the instant court proceedings, or any government official acting in an official capacity, shall not be deemed to be a nonparty witness.

(k) *Visually obscured* shall mean that the face of a participant in a criminal trial proceeding shall either not be shown or shall be rendered visually unrecognizable to the viewer of such proceeding by means of special editing by the news media.

Historical Note

Sec. filed Dec. 2, 1987; amds. filed: Oct. 17, 1989; Nov. 12, 1992 eff. Nov. 5, 1992.
Amended (i); added (j)-(k).

§ 131.3 Application for audio-visual coverage.

(a) Coverage of judicial proceedings shall be permitted only upon order of the presiding trial judge approving an application made by a representative of the news media for permission to conduct such coverage.

(b) (1) Except as provided in paragraph (2) of this subdivision, an application for permission to conduct coverage of a judicial proceeding shall be made to the presiding trial judge not less than seven days before the scheduled commencement of that proceeding. Where circumstances are such that an applicant cannot reasonably apply more than seven days before commencement of the proceeding, the presiding trial judge may shorten the time period. The application shall be in writing and shall specify such proceeding with sufficient particularity to assist the presiding trial judge in considering the application, and shall set forth which of the types of coverage described in section 131.2(b) of this Part is sought, including whether live coverage is sought. Upon receipt of any application, the presiding trial judge shall cause all parties to the proceeding to be notified thereof.

(2) An application for permission to conduct coverage of an arraignment in a criminal case or of any other proceeding after it has commenced may be made to the presiding trial judge at any time and shall be otherwise subject to the provisions of paragraph (1) of this subdivision.

(3) Each application shall relate to one case or proceeding only, unless the presiding trial judge permits otherwise.

(c) Where more than one representative of the news media makes an application for coverage of the same judicial proceeding, such applications shall be consolidated and treated as one.

Historical Note

Sec. filed Dec. 2, 1987 eff. Dec. 1, 1987.

§ 131.4 Determination of the application.

(a) Upon receipt of an application pursuant to section 131.3 of this Part, the presiding trial judge shall conduct such review as may be appropriate, including:

- (1) consultation with the news media applicant;
- (2) consultation with counsel to all parties to the proceeding of which coverage is sought, who shall be responsible for identifying any concerns or objections of the parties, prospective witnesses, and victims, if any, with respect to the proposed coverage, and advising the court thereof; and
- (3) review of all statements or affidavits presented to the presiding trial judge concerning the proposed coverage.

Where the proceedings of which coverage is sought involve a child, a victim, a prospective witness, or a party, any of whom object to such coverage, and in any other appropriate instance, the presiding trial judge may hold such conferences and conduct any direct inquiry as may be fitting.

(b) (1) Except as otherwise provided in paragraphs (2) and (3) of this subdivision or section 131.8 of this Part, consent of the parties, prospective witnesses, victims or other participants in judicial proceedings of which coverage is sought is not required for approval of an application for such coverage.

(2) An application for audio-visual coverage of a trial proceeding in which a jury is sitting, made after commencement of such proceeding, shall not be approved unless counsel to all parties to such proceeding consent to such coverage; provided, however, this paragraph shall not apply where coverage is sought only of the verdict or sentencing, or both, in such proceeding.

(3) Counsel to each party in a criminal trial proceeding shall advise each nonparty witness that he or she has the right to request that his or her image be visually obscured during said witness' testimony, and upon such request the presiding trial judge shall order the news media to visually obscure the visual image of the witness in any all audio-visual coverage of the judicial proceeding.

(c) In determining an application for coverage, the presiding trial judge shall consider all relevant factors, including but not limited to:

- (1) the type of case involved;
- (2) whether the coverage would cause harm to any participant;
- (3) whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties;
- (4) whether any order directing the exclusion of witnesses from the courtroom prior to their testimony could be rendered substantially ineffective by allowing audio-visual coverage that could be viewed by such witnesses to the detriment of any party;
- (5) whether the coverage would interfere with any law enforcement activity;
- (6) whether the proceedings would involve lewd or scandalous matters;
- (7) the objections of any of the parties, prospective witnesses, victims or other participants in the proceeding of which coverage is sought;

(8) the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse; and

(9) the extent to which the coverage would be barred by law in the judicial proceeding of which coverage is sought.

The presiding trial judge also shall consider and give great weight to the fact that any party, prospective witness, victim, or other participant in the proceeding is a child.

(d) Following review of an application for coverage of a judicial proceeding, the presiding trial judge, as soon as practicable, shall issue an order, in writing, approving such application, in whole or in part, or denying it. Such order shall contain any restrictions imposed by the judge on the audio-visual coverage and shall contain a statement advising the parties that any violation of the order is punishable by contempt pursuant to article 19 of the Judiciary Law. Such order shall be included in the record of such proceedings and, unless it wholly approves the application and no party, victim or prospective witness objected to coverage, it shall state the basis for its determination.

(e) Before denying an application for coverage, the presiding trial judge shall consider whether such coverage properly could be approved with the imposition of special limitations, including but not limited to:

(1) delayed broadcast of the proceedings subject to coverage; provided, however, where delayed broadcast is directed, it shall be only for the purpose of assisting the news media to comply with the restrictions on coverage provided by law or by the presiding trial judge;

(2) modification or prohibition of audio-visual coverage of individual parties, witnesses, or other trial participants, or portions of the proceedings; or

(3) modification or prohibition of video coverage of individual parties, witnesses, or other trial participants, or portions of the proceedings.

Historical Note

Sec. filed Dec. 2, 1987; amds. filed: Oct. 17, 1989; Nov. 12, 1992 eff. Nov. 5, 1992.
Amended (b)-(d).

§ 131.5 Review.

(a) Any order determining an application for permission to provide coverage, rendered pursuant to section 131.4(d) of this Part, shall be subject to review by the administrative judge in such form, including telephone conference, as he or she may determine, upon the request of a person who is aggrieved thereby and who is either:

(1) a news media applicant; or

(2) a party, victim, or prospective witness who objected to coverage.

(b) Upon review of a presiding trial judge's order determining an application for permission to provide coverage, the administrative judge shall uphold such order unless it is found that the order reflects an abuse of discretion by the presiding trial judge, in which event the administrative judge may direct such modification of the presiding trial judge's order as may be deemed appropriate. Any order directing a modification or overruling a presiding trial judge's order determining an application for coverage shall be in writing.

(c) No judicial proceeding shall be delayed or continued to allow for review by an administrative judge of an order denying coverage in whole or in part.

(d) This section shall authorize review by the administrative judge only of a presiding trial judge's order pursuant to paragraph 3(b) of section 218 of the Judiciary Law, determining an application for permission to provide coverage of judicial proceedings and shall not authorize review of any other orders or decisions of the presiding trial judge relating to such coverage.

Historical Note

Sec. filed Dec. 2, 1987; amd. filed Oct. 17, 1989 eff. Oct. 11, 1989. Amended (d).

§ 131.6 Mandatory pretrial conference.

(a) Where a presiding trial judge has approved, in whole or in part, an application for coverage of any judicial proceeding, the judge, before any such coverage is to begin, shall conduct a pretrial conference for the purpose of reviewing, with counsel to all parties to the proceeding and with representatives of the news media who will provide such coverage, any objections to coverage that have been raised, the scope of coverage to be permitted, the nature and extent of the technical equipment and personnel to be deployed, and the restrictions on coverage to be observed. The court may include in the conference any other person whom it deems appropriate, including prospective witnesses and their representatives. In an appropriate case, the presiding trial judge may conduct the pretrial conference concurrently with any consultations or conferences authorized by section 131.4(a) of this Part.

(b) Where two or more representatives of the news media are parties to an approved application for coverage, no such coverage may begin until all such representatives have agreed upon a pooling arrangement for their respective news media prior to the pretrial conference. Such pooling arrangement shall include the designation of pool operators and replacement pool operators for the electronic and motion picture media and for the still photography media, as appropriate. It also shall include procedures for the cost-sharing and dissemination of audio-visual material and shall make due provision for educational users' needs for full coverage of entire proceedings. The presiding trial judge shall not be called upon to mediate or resolve any dispute as to such arrangement. Nothing herein shall prohibit a person or organization that was not party to an approved application for coverage from making appropriate arrangements with the pool operator to be given access to the audio-visual material produced by the pool.

(c) In determining the scope of coverage to be permitted, the presiding trial judge shall be guided by a consideration of all relevant factors, including those prescribed in section 131.4(c) of this Part. Wherever necessary or appropriate, the presiding trial judge shall, at any time before or during the proceeding, proscribe coverage or modify, expand, impose or remove special limitations on coverage, such as those prescribed in section 131.4(e) of this Part.

Historical Note

Sec. filed Dec. 2, 1987 eff. Dec. 1, 1987.

§ 131.7 Use and deployment of equipment and personnel by the news media.**(a) Limitations upon use of equipment and personnel in the courtroom.**

(1) No more than two electronic or motion picture cameras and two camera operators shall be permitted in any proceeding.

(2) No more than one photographer to operate two still cameras, with not more than two lenses for each camera, shall be permitted in any proceeding.

(3) No more than one audio system for broadcast purposes shall be permitted in any proceeding. Audio pickup for all news media purposes shall be effectuated through existing audio systems in the court facility. If no technically suitable audio system is available, microphones and related wiring essential for media purposes shall be supplied by those persons providing coverage. Any microphones and sound wiring shall be unobtrusive and placed where designated by the presiding trial judge.

(4) Notwithstanding the provisions of paragraphs (1)-(3) of this subdivision, the presiding trial judge on a finding of special circumstances may modify any restriction on the amount of equipment or number of operating personnel in the courtroom, compatible with the dignity of the court or the judicial process.

(b) Sound and light criteria. (1) Only electronic and motion picture cameras, audio equipment and still camera equipment that do not produce distracting sound or light may be employed to cover judicial proceedings. The equipment designated in section 131.13 of this Part shall be deemed acceptable.

(2) Use of equipment other than that authorized in section 131.13 of this Part may be permitted by the presiding trial judge provided the judge is satisfied that the equipment sought to be utilized meets the sound and light criteria specified in paragraph (1) of this subdivision. A

failure to obtain advance approval shall preclude use of such equipment in the coverage of the judicial proceeding.

(3) No motorized drives, moving lights, flash attachments, or sudden lighting changes shall be permitted during coverage of judicial proceedings.

(4) No light or signal visible or audible to trial participants shall be used on any equipment during coverage to indicate whether it is operating.

(5) With the concurrence of the presiding trial judge and the administrative judge, modifications and additions may be made in light sources existing in the court facility, provided such modifications or additions are installed and maintained at media expense and are not distracting or otherwise offensive.

(c) *Location of equipment and personnel.* Electronic and motion picture cameras, still cameras, and camera personnel shall be positioned in such locations as shall be designated by the presiding trial judge. The areas designated shall provide the news media with reasonable access to the persons they wish to cover while causing the least possible interference with court proceedings. Equipment that is not necessary for audio-visual coverage from inside the courtroom shall be located in an area outside the courtroom.

(d) *Movement of equipment and media personnel.* During the proceedings, operating personnel shall not move about, nor shall there be placement, movement or removal of equipment, or the changing of film, film magazines or lenses. All such activities shall take place each day before the proceeding begins, after it ends, or during a recess.

(e) *Identifying insignia.* Identifying marks, call letters, words, and symbols shall be concealed on all equipment. Persons operating such equipment shall not display any identifying insignia on their clothing.

(f) *Other restrictions.* The presiding trial judge may impose any other restriction on the use and deployment of equipment and personnel as may be appropriate.

Historical Note

Sec. filed Dec. 2, 1987; amd. filed Nov. 12, 1992 eff. Nov. 5, 1992. Amended (f).

§ 131.8 Additional restrictions on coverage.

(a) No audio pickup or audio broadcast of conferences that occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding trial judge, shall be permitted without the prior express consent of all participants in the conference.

(b) No conference in chambers shall be subject to coverage.

(c) No coverage of the selection of the prospective jury during *voir dire* shall be permitted.

(d) No coverage of the jury, or of any juror or alternate juror, while in the jury box, in the courtroom, in the jury deliberation room, or during recess, or while going to or from the deliberation room at any time, shall be permitted provided, however, that, upon consent of the foreperson of a jury, the presiding trial judge may, in his or her discretion, permit audio coverage of such foreperson delivering a verdict.

(e) No coverage shall be permitted of a witness, who as a peace officer or police officer acted in a covert or undercover capacity in connection with the proceedings being covered, without the prior written consent of such witness.

(f) No coverage shall be permitted of a witness, who as a peace officer or police officer is currently engaged in a covert or undercover capacity, without the prior written consent of such witness.

(g) No coverage shall be permitted of the victim in a prosecution for rape, sodomy, sexual abuse, or other sex offense under article 130 or section 255.25 of the Penal Law; notwithstanding the initial approval of a request for audio-visual coverage of such a proceeding, the presiding trial judge shall have discretion throughout the proceeding to limit any coverage that would identify the victim, except that said victim can request of the presiding trial judge that audio-visual

coverage be permitted of his or her testimony, or in the alternative the victim can request that coverage of his or her testimony be permitted but that his or her image shall be visually obscured by the news media, and the presiding trial judge in his or her discretion shall grant the request of the victim for the coverage specified.

(h) No coverage of any participant shall be permitted if the presiding trial judge finds that such coverage is liable to endanger the safety of any person.

(i) No coverage of any judicial proceedings that are by law closed to the public, or that may be closed to the public and that have been closed by the presiding trial judge, shall be permitted.

(j) No coverage of any arraignment or suppression hearing shall be permitted without the prior consent of all parties to the proceeding; provided, however, where a party is not yet represented by counsel, consent may not be given unless the party has been advised of his or her right to the aid of counsel pursuant to subdivision 4 of section 170.10 or 180.10 of the Criminal Procedure Law and the party has affirmatively elected to proceed without counsel at such proceeding.

(k) No audio-visual coverage shall be permitted which focuses on or features a family member of a victim or a party in the trial of a criminal case, except while such family member is testifying. Audio-visual coverage operators shall make all reasonable efforts to determine the identity of such persons, so that such coverage shall not occur. The restrictions specified in subdivisions (a) through (k) of this section may not be waived or modified except as provided therein.

Historical Note

Sec. filed Dec. 2, 1987; amds. filed: Oct. 17, 1989; Nov. 12, 1992 eff. Nov. 5, 1992.
Amended (d), (g), (j); added (k).

§ 131.9 Supervision of audio-visual coverage.

(a) Coverage of judicial proceedings shall be subject to the continuing supervision of the presiding trial judge. No coverage shall take place within the courtroom, whether during recesses or at any other time, when the presiding trial judge is not present and presiding.

(b) Notwithstanding the approval of an application for permission to provide coverage of judicial proceedings, the presiding trial judge shall have discretion throughout such proceedings to revoke such approval or to limit the coverage authorized in any way. In the exercise of this discretion, the presiding trial judge shall be especially sensitive and responsive to the needs and concerns of all parties, victims, witnesses, and other participants in such proceedings, particularly where the proceedings unnecessarily threaten the privacy or sensibilities of victims, or where they involve children or sex offenses or other matters that may be lewd or scandalous. The presiding trial judge shall be under a continuing obligation to order the discontinuation or modification of coverage where necessary to shield the identity or otherwise insure the protection of any such person, party, witness, or victim, or in order to preserve the welfare of a child.

(c) Counsel to each party in a trial proceeding that is subject to coverage shall inquire of each witness that he or she intends to call regarding any concerns or objections such witness might have with respect to coverage. Where counsel thereby is advised that a witness objects to coverage, counsel shall so notify the presiding trial judge.

Historical Note

Sec. filed Dec. 2, 1987; amd. filed Oct. 17, 1989 eff. Oct. 11, 1989. Added (c).

§ 131.10 Cooperation with committee.

(a) All officers and employees of the Unified Court System, and all participants in proceedings where audio-visual coverage was permitted, including judges, attorneys and jurors, shall

cooperate with the committee to review audio-visual coverage of court proceedings in connection with the committee's review of the impact of audio-visual coverage on such proceedings.

Historical Note

Sec. filed Dec. 2, 1987; amds. filed: Jan. 25, 1988; Oct. 17, 1989; repealed, new filed Nov. 12, 1992 eff. Nov. 5, 1992.

§ 131.11 Appellate courts.

These rules shall not apply to coverage of proceedings in appellate courts or affect the rules governing such coverage contained in Part 29 of the Rules of the Chief Judge (22 NYCRR Part 29).

Historical Note

Sec. filed Dec. 2, 1987 eff. Dec. 1, 1987.

§ 131.12 Forms.

The Chief Administrator will promulgate and make available forms for applications pursuant to section 131.3 and for judicial orders pursuant to section 131.4 of this Part.

Historical Note

Sec. filed Dec. 2, 1987; amds. filed: Oct. 17, 1989; Nov. 12, 1992 eff. Nov. 5, 1992.

§ 131.13 Acceptable equipment.

The following equipment shall be deemed acceptable for use in audio-visual coverage of trial court proceedings pursuant to this Part:

(a) *Video cameras.*

Sony:

BVP-3, BVP-3A, BVP-3U, BVP-5, BVP-30, BVP-33Am, BVP-50J, BVP-110, BVP-150, BVP-250, BVP-300, BVU-300, BVV-1, BVV-5, DXC-3000, M-3

Ikegami:

HL-79, HL-79D, HL-79E, HL-83, HL-95, ITC-170, SP-3A, 75-D, 79-E, 95, 730, 730a, 730ap
JVC:

KY-1900, KY-2000, KY-2700, BY-110

RCA:

TK-76

Thompson:

501, 601

NEC:

SP-3A

Sharp:

XC-800

Panasonic:

X-100 (the recam system in a camera/recorder combination)

Ampex:

Betacam

(b) *Still cameras.*

Leica:

M
Nikon:

FE, F-3, FM-2, 2000
Canon:

F-1, T-90

(c) Any other audio or video equipment may be used with the permission of the presiding trial judge.

Historical Note

Sec. filed Dec. 2, 1987 eff. Dec. 1, 1987.

APPLICATION FOR PERMISSION TO CONDUCT
AUDIO-VISUAL COVERAGE

_____ Court, _____ County

In the Matter of an Application to
Conduct Audio-Visual Coverage of

Index No. _____

Indictment No. _____

Calendar No. _____

(Complete as applicable, if known)

Judge assigned (if known): _____

TO THE COURT:

1. The undersigned hereby applies for permission to conduct audio-visual coverage of the above judicial proceeding as follows (check as appropriate):

televise live

audio (radio) broadcast live

videotape for later broadcast

audiotape for later broadcast

film

use still photography

tape record

other (specify)

2. The scope of coverage requested is (check as appropriate):

throughout the above proceeding

during only the following portion(s) of such proceeding (specify):

(Signature)

(Name)

(Media organization)

(Address)

() _____
(Telephone number)

Dated: _____

ORDER DETERMINING APPLICATION FOR AUDIO-VISUAL COVERAGE

County _____

In the Matter of an Application to Conduct Audio-Visual Coverage of

ORDER DETERMINING APPLICATION FOR AUDIO-VISUAL COVERAGE

(Index) (Indictment) (Calendar) No. _____

PRESENT: Hon. _____

An application having been made in this Court on _____, pursuant to section 181.8 of the Rules of the Chief Administrative Judge by _____ (news media applicant), requesting permission to (specify type of coverage) _____ the above judicial proceeding; and

The Court having reviewed the application and the attached statements and affidavits presented to the Court concerning the proposed coverage; and the Court having consulted with the news media applicant and counsel to all parties to the above-named proceeding (and with (specify others—e.g., victims, witnesses, etc.—as appropriate)) _____

NOW, upon consideration of all relevant factors, including those specified in section 181.1(e) of the Rules of the Chief Administrative Judge, it is hereby **ORDERED** that the application is (approved) (denied) (approved with the following special limitations: _____) (struck out inapplicable language).

The basis for the determination is (to be completed unless the application is approved without special limitations and no party, victim or prospective witness objects to coverage): _____

Date: _____

(Judge) (Judge) _____

Appendix I

Cameras in the Courts

Recommendations for Continuing Judicial Education

I. Course on Cameras in the Courts

A. Introduction

- 1. Historical, constitutional and statutory background**
- 2. Overview of the results of the 1997 judicial survey conducted by New York State Committee to Review Audio-visual Coverage of Court Proceedings**

B. Section 218 of the Judiciary Law and Part 131 of the New York Rules of Court (Audio-Visual Coverage of Court Proceedings)

- 1. Authorization**
- 2. Definitions**
- 3. Time frame for filing requests for camera coverage**
- 4. Consent requirements (arraignments, suppression hearings, requests filed after commencement of proceedings)**
- 5. Exercise of judicial discretion**
 - a. consultation with counsel to all parties**
 - b. consideration of objections of parties, prospective witnesses, crime victims and others**
 - c. review of statutory and regulatory factors to be considered in the exercise of judicial discretion**
 - d. no presumption for or against camera access**
- 6. Circumstances when an evidentiary hearing should be held**
- 7. Special considerations in rape, death penalty and child custody cases**
- 8. Safeguards for witnesses' safety and privacy**
 - a. criminal proceedings**
 - b. civil proceedings**
- 9. Pre-trial conference**
- 10. Instructions and safeguards for jurors**
- 11. Supervision of audio-visual coverage throughout the proceedings; revocation of judicial consent; imposition of additional limits and restrictions**
- 12. Violations and sanctions**
- 13. Judicial review**
- 14. Questions and answers**

II. Assigned Readings

- 1. Section 218 of the Judiciary Law**
- 2. N.Y. Ct. Rules, Part 131**
- 3. 1997 Report of the New York State Committee to Review Audio-Visual Coverage of Court Proceedings**
- 4. Selected cases (*Estes, Chandler, Richmond Newspapers, etc.*)**
- 5. Selected readings from law review and psychosocial literature on cameras in the courts (see, e.g., bibliography appended to the 1997 Report of the New York State Committee to Review Audio-Visual Coverage of Court Proceedings)**

III. Discussion of hypotheticals presenting issues calling for the exercise of judicial discretion

IV. Case studies of abuses and violations of section 218

V. A simulated hearing on an application for audio-visual coverage in a criminal trial where the defendant objects to camera coverage

VI. Faculty

- 1. Chief Administrative Judge or representative**
- 2. Panels of camera-experienced judges, lawyers, witnesses, jurors, journalists and media scholars**

Appendix J

Comments:

- 1. Association of the Bar of the City of New York**
- 2. Committee on Children and the Law**
- 3. Commercial and Federal Litigation Section**
- 4. Criminal Justice Section**
- 5. Assemblywoman Gloria Davis**
- 6. Hon. John R. Dunne**
- 7. General Practice, Solo and Small Firm Section**
- 8. Health Law Section**
- 9. Committee on Media Law**
- 10. Henry G. Miller, Esq.**
- 11. Monroe County Bar Association**
- 12. New York County Lawyers' Association**
- 13. Hon. Eugene E. Peckham**
- 14. Women's Bar Association of the State of New York**
- 15. Hon. James A. Yates**

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VIA FAX

March 13, 2001

**Re: Comments on Preliminary Report to the House of Delegates
of the Special Committee on Cameras in the Courtroom
New York State Bar Association**

**A. Vincent Buzard, Esq.
Chair of the Special Committee
Bar Center
New York State Bar Association
One Elk Street
Albany, NY 12207**

Dear Mr. Buzard:

In recognition of the fact that television cameras in New York courtrooms may not become commonplace without further legislation, and given the important values served and benefits brought by their presence, the Association of the Bar of the City of New York ("ABCNY") through its Committee on Communications and Media Law, appreciates, and concurs as a general matter with, the Preliminary Report of the Special Committee on Cameras in the Courtroom of the New York State Bar Association ("Special Committee Report"), subject to the supplemental considerations described below. These considerations can be summarized as follows:

•ABCNY believes that Section 52 of the Civil Rights Law may ultimately be found unconstitutional, that appellate courts in New York will recognize a presumptive constitutional right

of New York citizens to view court proceedings, and that New York citizens should benefit from technology that allows them to exercise this fundamental right.

•Based upon measures to safeguard the rights of litigants, many of which are already in place, ABCNY agrees with and offers its supports to the recommendation in the Special Committee Report that consent of the parties should not and must not be a threshold condition to permitting cameras in courtrooms.

•In addition to the Special Committee's recommendations, legislation should create a *presumption* in favor of audio-visual coverage in New York courtrooms, one which can be overcome only by showing that circumstances exist that would make media coverage "qualitatively different from other types of news coverage and that make such coverage undesirable." Thus, when proceedings are open to the public and can be viewed by a citizen from the public galley, any restrictions that prevent audio-visual coverage should require a showing of good cause by the presiding judge. In addition, ABCNY believes that it should be emphasized that the physical presence of cameras are not inherently disruptive of court proceedings, that rights to obtain fair trials are not thwarted by the cameras in courtrooms, and that broad public access to judicial proceedings via cameras will minimize superficial coverage and help avoid any current problems that may arise from happenstance, *out-of-court* sound-bites.

•Judges should be protected from the imposition of unwieldy standards regarding audio-visual access that will interfere with their primary duties while curtailing presumptive rights of public access to court proceedings.

**The Presumptive Constitutional Right
of the Public to View Courtroom Proceedings**

ABCNY believes that when the Court of Appeals ultimately considers the question, it will find, as Judge Torres did, that Section 52 of the Civil Rights Law violates both the United States and New York Constitutions. An increasing number of New York judges have found, either explicitly or implicitly, that the public has a right to see what goes on in the courtroom, and that the 21st century has or will come to recognize a presumptive constitutional right of all citizens to do so through the 19th and 20th century technology of cameras.¹ As observed in a March 5 decision by Judge LaBuda, "it is time to allow cameras in the courtroom given the advancements in technology and the ever-changing ways society gets its news."²

Consent by the Parties is Unnecessary and Problematic

ABCNY strongly supports the Special Committee recommendation that cameras should be permitted in the trial courts of New York, notwithstanding the absence of consent of the parties provided other safeguards are present. By the same token, the requirement for zealous advocacy by counsel on behalf of their clients presents a risk of manipulation of public access rights in return for tactical advantages.³

¹ *People v. Anthony Schroedel*, Indictment 115-99 (March 5, 2001) (N.Y. Sup. Ct. Sullivan Co.) (LaBuda, J).

² *Id.*

³ See, e.g., Leigh Jones, *Long Island Lawyer Basks in Media Glare*, *N.Y.L.J.*, Jan. 2, 2001; Interview With Barry Schack, *Feeding the Ravenous Appetite of the Press: a defense attorney and law professor argues that reporting privileged information before it appears in court undermines the fairness of trials*, 12 *MEDIA STUDIES JOURNAL* 100, 104 (Winter 1998).

A Presumption In Favor of Audio-Visual Coverage Should Be Established

The recommendations of the Special Committee, do not go far enough. There should be a presumption in favor of audio-visual coverage in New York courtrooms, one which can be overcome only by showing that circumstances exist that would make media coverage "qualitatively different from other types of news coverage and that make such coverage undesirable." Absent such a presumption, in cases where cameras are permitted, only upon a finding of good cause by the presiding judge should there be restrictions that prevent audio-visual coverage of any proceedings that are open to the public and can be observed by someone sitting the gallery of the courtroom. Fairness, common sense, logic, and prior judicial consideration support this approach.

The Physical Presence of Cameras Need Not, Should Not, And Will Not Disturb Court Proceedings

Despite all of the differences on the underlying issue, no one disputes that the vast majority of the citizens of this State rely on television as their primary, if not only, source of news and information. "[T]he institutional press . . . serves as the 'agent' of the interested citizens, and furnishes information about trials to a large number of individuals."⁵ Audio-visual coverage of trials

⁴ *In re Petition of Post-Newsweek Stations*, 370 So.2d 764 (Fla. 1979).

⁵ See, e.g., *Wilson v. Layne*, 119 S.Ct. 1692, 1698, ___ U.S. ___ (1999), in which Chief Justice Rehnquist, writing for the majority, observed that

'In a society in which each individual has but limited time and resources with which to observe or first-hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations.' No one could gainsay the truth of these observations. (Citations omitted.)

Similarly, and analogous to the role played by demonstrative evidence as an acknowledged and valuable mechanism for informing the trier of fact about a particular case, see *Edward W. Clerly, MCCORMICK ON EVIDENCE* § 212 (3d ed. 1984), the availability of visual information

simply allows the media to fulfill this responsibility more effectively on behalf of the public. As we recently have observed in the case of the police officers charged in the Diallo shooting and the multitude of legal proceedings in Florida surrounding the 2000 election for president of the United States, television cameras in the courtroom provide the public with substantive access to the proceedings that cannot be equaled by traditional reporting.

These experiences, the experiences of every jurisdiction in the nation that permit audio-visual coverage of courts, and independent interviews with attorneys who have actual experience with cameras during trials consistently reveal that the potential harms and adverse effects feared by opponents of audio-visual coverage simply do not materialize. Technology has eliminated concerns about disruption of the proceedings themselves by the physical presence of television cameras. Small, silent cameras which do not need additional lighting are available and are used all over the country.

*The Rights of Criminal Defendants to Obtain Fair
Trials Will Not be Thwarted by Cameras in
Courtrooms*

The feared effects on the ability of a criminal defendant to obtain a fair trial with the presence of cameras are belied by the cases all over the United States that have been televised.⁶ Because of the media's role as surrogate for the public, high-profile, sensational trials will be covered by the news media whether or not television cameras are permitted in the courtroom.⁷

about court proceedings has a recognized educational value. See *Interview with Judge Richard S. Arnold and Judge Gilbert S. Merritt, Justice By the Consent of the Governed: Federal Judges on reciprocity between the press and the judiciary and the prospects for cameras in federal courts*, 12 MEDIA STUDIES JOURNAL 80, 81 (Winter 1998).

⁶ See generally Bruce W. Sanford, *No Contest: The Trumped-Up Conflict Between*

*Sound-Bias and the Safe Harbor from
Superficial Coverage or Scapegoating*

Criticism and concerns about so-called "sound-bites" should not be addressed by the

blunderbuss approach of keeping cameras out of New York courtrooms. To the contrary, the presence of cameras in the courtroom *increases* the likelihood of better public dissemination of case information and the avoidance of merely random clips from the fringes of the judicial system. If television cameras are not actually within the courtroom, they will certainly be outside of courtrooms, on the courthouse steps, around the building, and anywhere the participants may be found.

To be sure, legitimate concerns exist with respect to "coverage driven by sound bites," which may not "provide the public with sufficient information for an informed judgment about the outcome in an individual case, let alone the function of the legal system as a whole," or which in extreme cases, "can foment outrage at unpopular but legally sound decisions." New York's Chief Judge of the Court of Appeals notes, however, that "there is a difference between thoughtless reporting and scapegoating by sound bite," and it is precisely the availability of broad uniform public access to court proceedings via cameras that promises to provide a "safe harbor" for

Freedom of the Press and the Right to a Fair Trial, 12 MEDIA STUDIES JOURNAL 2 (Winter 1998).

⁷ See Andrew Tyndall, *What Gets on the Network? The O.J. Simpson trial dominated recent coverage of the courts*, 12 MEDIA STUDIES JOURNAL 54 (Winter 1998).

⁸ Judge Judith S. Kaye, *The Third Branch and the Fourth Estate: A state judge pleads for balance in coverage of the courts*, 12 MEDIA STUDIES JOURNAL 74, 76 (Winter 1998).

the type of happenstance coverage that promotes fleeting, inaccurate glimpses at a more comprehensive process.

Recent events suggest that the public will be far better informed by seeing excerpts from the proceeding itself, versus a derivative, after-the-fact interpretation. The *Diallo* case is illustrative, for there is no question that the public's understanding of the verdict was significantly enhanced by witnessing, through television, the police officers' testimony. Having a journalist merely report that the testimony was "emotional" could not possibly match the effect of seeing an officer crying on the witness stand, even if it was just a 10-second "sound-bite." Similarly, once the television news is covering a case from inside the courtroom, the participants in the case can be depicted in settings that evoke the decorum of official proceedings, which both educates the public about the fair implementation of the administration of justice, and enhances public respect for the courts.¹⁰

**Unwieldy Standards for Trial Judges
and Unwarranted Burdens Upon Public Access to the Courts**

Leaving aside the appropriate exercise of judicial discretion that is required to safeguard the rights of the parties, some of the burdens that would be placed upon judges by the Special Committee's recommendations appear to be unnecessary, counter-productive, and in some cases, unconstitutional. ABCNY respectfully submits that trial judges should be protected from the imposition of unwieldy standards that will interfere with their primary duties while interfering with presumptive rights of public access.

¹⁰ See *Press-Enterprise Co. v. Superior Court of Cal.*, 478 U.S. 1, 8 (1986) (discussing functional inquiry into significant, positive role that public access plays in the functioning of particular process, such as administration of criminal justice system).

Outtakes

The recommendation that broadcasters be required to tape the entire case and file the "outtakes" with OCA is fraught with legal difficulties and reflects a lack of understanding of how broadcasters operate. Requiring a broadcaster to be present for and tape all of a trial even when, in the editorial judgment of the station, it is not warranted, implicates that station's First Amendment rights.¹¹ Even if such an approach were constitutional, the NYSBA should not advocate a position that would condition audio-visual access on waiver of the fundamental right of editorial judgment. Also, trial judges ought to be spared from having to become involved in such issues.

In addition, the economics of complying with this requirement will discourage large stations from seeking camera access and shut out smaller stations with fewer resources. The theory behind the recommendation - that it will encourage broadcasters to use more than short clips - cannot hold up in the face of operational reality for television and cable news. Programs run for a fixed period of time, and the length of the report on any specific topic or trial depends upon the judgment of the news director, taking into consideration other events that must be included in the newscast. In general, the station has significantly more material for every story than makes it into the final report. As important as any single trial may be, it nonetheless will remain only one of a multitude of issues reported on any day. The availability of more video from that trial simply will not materially affect these basic facts.

¹¹ See *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256-258 (1974). Indeed, the Federal Communications Commission has concluded that compelling a broadcaster to cover "controversial issues of interest in the community violates the First Amendment. See *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989) (upholding agency decision to eliminate the Fairness Doctrine without reaching constitutional issue).

On the other hand, requiring a station to devote one of a limited number of crews full-time to a trial of undetermined length – and thus making it unavailable for other events – will impose a significantly higher cost on audio-visual coverage of a trial than exists for coverage of the trial without cameras in the courtroom. As a result, this requirement likely will result in much less coverage, not extended coverage.¹² That coverage, moreover, will likely be only of the most high-profile and sensational cases, because those are the only ones for which a news director will be able to spare the crew. The everyday work of lawyers and the judicial system – which has the most educational value – would thus remain unavailable for observation by most New Yorkers. As New York State's Chief Judge has noted, "[V]ery little of the forest of institutional competence is seen in the popularly reported accounts of the courts. The emphasis on sensational cases is one reason for this. Without question, focus on the exceptional skews perceptions of what courts do and how they do it."¹³

***A Mandatory Advance Notice Requirement
Will Skew Audio-Visual Coverage and Is Unrealistic***

As with unrealistic or inappropriate conditions upon the use of outtakes, imposition of a mandatory advance notice requirement (e.g., an application for television cameras 30 days in advance of jury selection) will likely distort coverage and present an ill-advised intrusion into the

¹² Even CourtTV, which strives to have gavel-to-gavel coverage of its cases, cannot guarantee at the outset that it will be able to do so in every case. For example, if CourtTV were televising a trial in progress when the 2000 election took place, implementation of the Special Committee's Preliminary Report recommendations would have prevented it from terminating coverage of that trial to send the crew to Florida to cover one of the many election cases that materialized.

¹³ Judge Judith S. Kaye, *The Third Branch and the Fourth Estate: A state judge pleads for balance in coverage of the courts*, MEDIA STUDIES JOURNAL 74, 75-76 (Winter 1998).

public's First Amendment right to unrestricted news reports. While recognizing that increased notice may perhaps affect pre-trial logistics, whatever benefits that might be achieved are far outweighed by the harm to the public interest that would result from such impermissible criteria, which would have the effect of usurping editorial discretion from those with a constitutional responsibility to provide timely information to New York State citizens.

Consent and the Limitations of Section 218

As cogently observed in the Special Committee's Preliminary Report, requiring consent of the parties for audio-visual coverage of any proceedings defeats the value of access. Similarly, the restriction on focusing upon or featuring a family member of a victim during a criminal trial (unless that person is testifying) places those watching on televisions or computer monitors at a disadvantage. The jury and members of the public who have means to attend in person can see the family, and the public observing the trial electronically should be in no different position.¹⁴

Alternate, Less Burdensome Solutions to Unwisely Standards

Certain flawed standards that would guide a judge in exercising her or his discretion under the Special Committee's Preliminary Report can be readily corrected. First, many of the

¹⁴ Technological innovations do not alter the proper First Amendment analysis. See *Lovell v. City of Griffin, Ga.*, 303 U.S. 444, 452 (1938) ("The liberty of the press is not confined to newspapers and periodicals . . . The press in its connotation comprehends every sort of publication which affords a vehicle of information and opinion"). See also Laurence H. Tribe, *The Constitution in Cyberspace: Law and Liberty Beyond the Electronic Frontier*, Keynote Address at the First Conference on Computers, Freedom and Privacy (Mar. 26, 1991), <<http://www.cnet.org/conferences/cfb91/tribe2.htm>> (Constitution's norms, at their deepest level, must be invariant under merely technology transformations) (cited in Jonathan Wallace and Michael Green, *Bridging the Analogy Gap: The Internet, The Printing Press and Freedom of Speech*, 20 SEATTLE U. L. REV. 711, 748 n.166 (Spring 1997)).

concerns listed as factors to be considered can and should be addressed by alternative means available to courts. For example, the Preliminary Report recommends consideration of the initial effect of cameras both upon the ability to select an unbiased jury and the potential effect on subsequent proceedings in the event of a mistrial. These effects, however, can more properly be addressed through exacting and efficient voir dire.

Consideration of the "[e]ffect on excluded witnesses who should have access to the televised testimony of prior witnesses" falls into the same category. Judges routinely deal with the potentially prejudicial effects of publicity by instructing witnesses not to read or watch news coverage of the trial. Given the availability of alternatives that would not deprive citizens of effective access to the proceedings, these factors should only be considered *if* the judge has determined that the concerns cannot be resolved in any other way.

Second, listing some of the requirements without further elucidation as to how they should be considered raises the possibility of unintended results. For example, although party consent is expressly excluded from the Preliminary Report, it reappears in a different guise through the suggestion that "[p]arties support of or opposition to the request" should be considered by judges in exercising their discretion. Inclusion of this factor is inherently contradictory and could impose, indirectly, a consent requirement on any request. Similarly, consideration of "privacy rights" of participants in a proceeding poses the risk of an end-run around the consent bar and the creation of purported "rights" that have no legal basis. Any proceeding that is open to the public, whether or not cameras are present, allows for reporting of what takes place, and no "privacy rights" are implicated.

Witness "Video"

Requiring a broadcaster to obscure visually the image of any witness who so requests, without a showing of good cause, is unnecessary and serves to undermine the purpose and value of allowing coverage. Audio-visual coverage of trials like the *Diallo* case serve a significant educational purpose, in part, because viewers will be able to better understand how a jury reached its decision. In any trial, of course, the factfinder's decision often rests on credibility determinations from intangible factors such as witness demeanor, tone of voice, and the like. Individual witnesses alone should not possess the power to undermine that purpose. Instead, only upon a showing of good cause should a witness be obscured, and only upon a showing of good cause that obscuration will not be sufficient should audio-visual coverage of a particular witness's testimony be prohibited. The ability of the presiding trial judge to make such a finding eliminates virtually all potential adverse effects from the presence of cameras.

"Good Cause" Based Upon "Specific Harm"

It should be made clear that "good cause" must be based on the factual findings that specific harm "qualitatively different from other types of news coverage,"¹⁵ is likely to result from effective audio-visual coverage. Obvious examples would include (i) when there is a credible risk to a witness's safety, such as in the case of undercover police officers, and (ii) probable harm to a child witness, or victim in a sex offense or domestic violence case from having his or her image on television. Only in such limited circumstances, in which the presiding judge has determined that audio-visual coverage will in fact impede the administration of justice, should a witness be

¹⁵ *In re Puffin of Post Newsweek Stations*, 370 So.2d 764 (Fla. 1979)

obfuscated. While sexual assault and domestic violence cases raise special concerns that warrant careful consideration, they also deal with matters of significant public interest. Therefore, the trial judge should be empowered to determine where the balance falls in any given case for any specific witness.

Sincerely,

Jan F. Constantine

Jan F. Constantine, Esq.
Chair, Committee on Communications and Media Law
Association of the Bar of the City of New York

cc: Alan Rothstein, Esq.
General Counsel
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December 5, 2000

Dear Members of the Special Committee on Cameras in the Courtroom:

Thank you for permitting the Children and the Law Committee to comment on the issue of cameras in the courtroom. We understand that the Special Committee on Cameras in the Courtroom will be preparing a report shortly and that the New York State Bar Association intends to take a position on the issue of cameras in the courtroom in January. We further understand that the current position of the Association is that cameras in the courtroom are favored, provided that both parties consent to such coverage. Although our committee does not disagree with this general principle, it is our position that the rules that ultimately are adopted in New York State should be more sensitive to the interests of children. We propose three changes in particular: to adopt a protective standard for children; to extend that protection to juvenile delinquency proceedings; and to provide more guidance to courts in determining whether cameras should be permitted and whether other conditions to preserve anonymity should be imposed.

Presumption against Cameras in the Courtroom

Children need more protection than would be afforded by a generic standard that permits cameras in the courtroom in the discretion of the trial judge. Although the current family court rules contain a presumption in favor of access to the family court (with judicial discretion to close the courtroom where necessary), they are silent on the issue of cameras in the courtroom. Our committee is not opposed to allowing physical access to the courtroom under the existing rules, but believes that allowing cameras in the courtroom poses greater risks to children than physical access. This is true of children in child abuse and neglect proceedings, children who are the subject of divorce and custody proceedings, and children who have been named as respondents in juvenile delinquency proceedings. For all of these children, it is essential to protect their privacy and, most especially, their identities.

A more restrictive access standard for cameras is justified by the different nature of the access sought and the heightened privacy interest in family law matters. Audio-visual coverage is particularly intrusive and intimidating. Moreover, visual imagery has a greater potential to distort, especially when the images are chosen primarily for their salacious value.

See Christo Lassiter, *The Appearance of Justice: TV or Not TV - That is the Question*, 86 J. Crim. L. & Criminology 928, 998 (1996). Images of children that are broadcast on the evening news or published in a daily tabloid will haunt them for the rest of their lives, even more so than a newspaper article that discusses a case involving a child.

For these reasons, we agree with the protective standard proposed in the bill authored by Senator Lack, which would not permit audio-visual coverage in most cases involving children unless the court finds that the benefits to the public of audio-visual coverage substantially outweigh the risks presented by such coverage. We also agree with the bill's prohibition on audio-visual coverage of any child, even if cameras are allowed in the proceeding.

Protection of Respondents in Juvenile Delinquency Proceedings

We disagree with the proposed bill insofar as it does not extend the protections set forth above to respondents in juvenile delinquency proceedings, who are as vulnerable as children in other proceedings. Juvenile delinquency proceedings, like others in family court, have long been considered confidential, and even courts that have considered the issue recently have adhered to the notion that the public has no First Amendment right of access to such proceedings. See, e.g., *State ex rel. Plain Dealer v. Geuga County Court of Common Pleas*, 2000 WL 1205913 (Ohio 2000). We are particularly concerned with the bill's misguided view that those children who are named as respondents in juvenile delinquency proceedings do not deserve the same protections as children who are witnesses or victims. First, at least until the juvenile is found guilty, he or she should be deemed as vulnerable and just as deserving of protection as a child who is testifying for the prosecution—a child who, in some cases, is also at fault and/or will be found incredible.

Second, creating a less protective for juvenile delinquents would trivialize the primary goal of the proceeding—rehabilitation of the juvenile. These juveniles, unlike adults who commit similar acts, are not considered entirely blameworthy. The law still considers these children to be unable to fully appreciate the consequences of their actions. They should not be stigmatized throughout their lifetime by the media coverage of a high profile crime that seemed attractive to the broadcast media at the time.

Finally, even if the presumption of innocence is cast aside and guilt is presumed, the fact remains that the tabloid-enhanced image of the violent and remorseless juvenile predator represents the rare and extreme case. The reality is that many juvenile delinquents are themselves victims of abuse and neglect, who are in dire need of mental health and educational services. They are as much at risk of emotional harm from exposure to a mass television audience as the child who is the subject of an abuse or neglect proceeding.

Additional Restrictions on Audio-Visual Coverage

Our committee also recommends that any legislation adopted should include some additional guidance to the court, so that it can more effectively impose conditions to protect vulnerable children and prevent disclosure of information that would identify the child litigants.

First of all, we would recommend that the following be added to the list of factors to be weighed by the court when considering a request for audio-visual coverage:

- 1. Whether, given all the circumstances and, in particular, the nature of the evidence to be presented, it is reasonably likely that restrictions designed to preserve the anonymity of the litigants will be effective.**
- 2. Whether the proceeding involves allegations of sexual abuse.**
- 3. The impaired emotional or psychological condition, or other type of vulnerable condition, of a child involved in the proceeding.**
- 4. Whether the proceedings will be broadcast to the public live, or subsequent to the proceedings via videotapes that can be edited.**

Second, even if cameras were permitted, we would also favor the imposition of conditions designed to preserve the anonymity of child litigants, although these conditions need not be expressly set forth in the statute itself. For instance, courts should require that litigants be referred to by their first names only or by their initials, or by neutral terms such as "mother," "father" or "child." The overall objective should be to allow public education to be adequately served without exposing children to publicity and, in the worst case scenarios, humiliation and harassment.

For your information, committee members Jennifer Rosato and Gary Solomon authored this response.

Please contact us if you have any questions, and please send us a draft report when it is completed. Thank you for considering the views of the Children and the Law Committee on this important matter.

Jack Carter, Esq., Chair



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VIA FACSIMILE AND US MAIL

A. Vincent Buzard, Chair
Special Committee on Cameras in the Courtroom
New York State Bar Association
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Albany, New York 12207

RE: Cameras in the Courtroom

Dear Mr. Buzard:

Thank you and all of the members of your Special Committee for all of their efforts. On behalf of the Commercial and Federal Litigation Section, I am forwarding the report done by our Section's Working Group set up to comment on the Special Committee's Report.

The general position of the Commercial and Federal Litigation Section is that there should be a presumption in favor of granting media requests for audio/visual coverage so long as appropriate safeguards are provided for protecting the privacy interests of witnesses who so request. The report comments on six specific recommendations.

The enclosed report has been annotated to show the action taken by the Commercial and Federal Litigation Section at the meeting of its Executive Committee on February 22, 2001. I have included all of the discussion for the benefit of the Special Committee and House of Delegates.

Please let me know if you have any questions.

Very truly yours,

Sharon M. Porcellio
Chair

SMP:vlis

cc: Jay G. Safer, Esq., (w/encl.)
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**New York State Bar Association
Section on Commercial and Federal Litigation
Working Group Report on Cameras in the Courtroom**

Introduction

From 1992 to June 30, 1997, New York State law provided for an experimental program in which trial judges enjoyed discretion to permit audio/visual coverage of civil and criminal proceedings. Judiciary Law § 218(11). On February 5, 2001, the New York State Bar Association's Special Committee on Cameras in the Courtroom issued a Report that preliminarily recommends that the law which currently prohibits audio/visual coverage of court proceedings (Civil Rights Law § 52) be changed to permit audio/visual coverage of trial proceedings if the trial judge authorizes it, in the exercise of discretion and without any presumption for or against cameras. The Special Committee identifies 21 factors for the trial judge to consider, plus "any other fact that the judge deems relevant," and for the trial judge to enter written findings of fact. An appeal to the Administrative Judge would be available, to be decided on a *de novo* basis.

Under the Special Committee's proposal, 1) the consent of the parties to the proceeding is not necessarily required; 2) witnesses are to be provided with visual and voice distortion at their request; 3) cameras are not to be permitted where the victim in a sex crime or domestic violence case so requests; 4) cameras are to be entirely prohibited in family court proceedings; 5) there is to be no audio/visual coverage of the jury; 6) there is to be no audio/visual coverage of any aspect of the trial which the jury does not see, such as side bar conferences and arguments on the admissibility of evidence; and 7) audio/visual coverage of appeals is to be permitted.

The Special Committee notes that 33 states currently authorize cameras in the courtroom without the consent of the parties but with various restrictions, and that another ten states permit

it with the parties and/or witnesses' consent. The federal system, including the District of Columbia, and three states, including New York, prohibit audio/visual coverage. In the recent Diallo case, however, television coverage was permitted on the trial judge's ruling that exclusion was unconstitutional.

A Working Group of the Section on Commercial and Federal Litigation has reviewed the Special Committee's recommendations with a view to providing the Section's comments on the Report by March 5, 2001, the date set by the Special Committee. The State House of Delegates is scheduled to give formal consideration to the Report when it meets on March 31, 2001.

The Working Group's Recommendation (annotated to show official comments of the Commercial and Federal Litigation Section)

We recommend that the Section take the following position:

See Point 2 - as a result of disapproval of Point 2 and in light of Point 6 this recommendation is unnecessary

1) **Audio/visual coverage of trials should be permitted without requiring consent from parties or witnesses in all "public cases" – those directly concerning the operations of any government entity, subdivision or agency.**

The prime recent example of such a proceeding is Bush v. Gore. The issues involved were of the highest public significance and the public's vital interest extended not only to the conclusion of the proceedings in the U.S. Supreme Court but to how they were handled, from beginning to end, in the Florida courts. Indeed the public's acceptance – or non-acceptance – of the political result may depend in large measure on its confidence – or lack of confidence – in the working of the judicial process in this instance. It is in this class of cases that First Amendment

interests are strongest and privacy concerns weakest.

Another recent example of a proceeding in this category is the Diallo case. That case had the added element of being a criminal trial, and the defendants may have had keen personal interests in avoiding unwanted publicity, as well as a strong interest in avoiding any influence on the jury's proceedings that cameras might introduce. The defendants were, however, public officers and were being tried for actions taken in the discharge of their duties that raised issues of grave public concern.

In this class of cases, the public interest in audio/visual coverage trumps whatever private interests they may be in avoiding unwanted publicity and in avoiding possible deleterious effects on the proceeding itself. In nuclear physics the change in an event that is caused by the very act of observing it is known as the "Heisenberg effect." Something very much like it may occur at a trial when the cameras are turned on. It may have accounted for what many saw as deficiencies (or excesses) in the criminal trial of O.J. Simpson. That trial and trials like it do not, however, involve public parties or issues – as distinguished from celebrity and sensationalism – and merit separate consideration.

2) The express consent of the parties should be required in most trials before audio/visual coverage is permitted.

Disapproved

Generally, acceptance of audio/visual coverage should not be part of the price of admission to a courtroom. Cases involving government operations aside, we believe the weight of the Bar should be put on removing obstacles to litigants' access to justice, not creating new ones.

As the Special Committee says, "lawyers know when a problem has affected the outcome of a trial, and they know too when a problem may affect the outcome." Although the Special

Committee uses this observation as a basis for not requiring consent from the parties, on the ground that lawyers who have participated in televised trials have not claimed that it affected the outcome, we think it argues instead for giving conclusive effect to a party's conclusion in a particular case that the "Heisenberg effect" will be significant and prejudicial.

Litigants who are camera-shy for whatever reason should not have to give up their right to a trial in order to preserve their affairs from becoming television fodder. The Special Committee has already recognized victims' rights to prevent television coverage in sex crime or domestic violence cases and recommends a prohibition against televising family court proceedings, but this doesn't go far enough. Adults, as well as children, have important privacy interests, and not just with respect to sex.

In dispensing with a requirement in most cases of the parties' consent, the Special Committee gives little weight to an important dimension of most trials: usually one or more of the parties is in court involuntarily and any witnesses appearing pursuant to subpoenas are likewise not participating voluntarily. Court proceedings are thereby distinguished from most public proceedings which are subject to broadcast, such as legislative hearings, press conferences, and the like in which all participants are present voluntarily in the expectation of promoting some benefit. When the appearance of individuals is coerced, rather than voluntary, their views deserve particular solicitude. A compulsory appearance at a trial should not be enlarged into exposure in the largest public fish bowl possible without the consent of those who are to appear, at least in the absence of compelling countervailing interests.

3) We agree with the Special Committee that there is no reason not to permit audio/visual coverage of an appeal.

Approved

4) In trials where audio/visual coverage is permitted, it should not be restricted to

-4- **Approved**

showing just what the jury considers.

There is also a legitimate public interest in how the proceedings are shaped for the jury. The Special Committee's suggested prohibition on televising matters that a jury wouldn't see, such as arguments about admissibility of evidence, seems misplaced. The jury can be shielded from these arguments in other ways. If televising of a courtroom proceeding is to be permitted, only *in camera* proceedings should be off limits.

5) **An application by the media for permission to provide television coverage should be made directly to the administrative judge, not the, as Special Committee recommends, to the trial judge.**

Approved

Having applications routed directly to the administrative judge will promote uniformity and avoid idiosyncratic treatments of media requests. It will also reduce the extent of satellite litigation over whether and in what form audio/visual coverage is to be permitted.

As approved:

6) **There should be a presumption in favor of granting media requests for audio/visual coverage so long as appropriate safeguards are provided for protecting the privacy interests of witnesses who so request.**

Prior Point 6 and discussion - There should be a presumption in favor of granting media requests for audio/visual coverage, both in "public cases" and those where all parties' consent has been obtained and appropriate safeguards are provided for protecting the privacy interests of witnesses who so request. The importance of the public's right to know justifies a presumption in favor both of cases that have been defined as of public concern and those "private cases" where the parties consent. The issue of coverage should not have to be

addressed *ab initio* each time.

There is much room for argument about where to draw the line between "public interest" cases and "essentially private" ones. With experience the line may be adjusted in one direction or another.

For example, viewing televised tobacco trials, and watching defendants' chief executive officers testify as to their belief as to the non-addictive properties of nicotine, is likely to inform public opinion to a far greater extent than reading reports of the trial in the back pages of some newspapers. One could hardly imagine tobacco companies, concerned as they are with declining public acceptance, giving their consent to televising these trials. Nor could one imagine pharmaceutical companies, tire manufacturers or asbestos producers giving consent to the televising of product liability cases against them.

On the other hand, while it could well be argued that trials involving public or economic policy implications should be televised, while the merely lurid are not, courts should not be dragged into becoming arbiters of taste. For example, is a sexual harassment case brought against a major law firm merely salacious, or is it a clarion call for attorneys to exercise vigilance in their employment practices? Are drug charges leveled against a teacher purely private, or do they have policy implications relating the school system? There simply is no bright line test for determining the type of case which should be televised or filmed over a litigant's objection.

It may be safest, therefore, to begin with a conservative and easily administered definition of what is a "public interest" case, as presented in Point 1, and allow experience with cameras in the courtroom to accumulate in New York as well as in other states.

Working Group on Cameras in the Courtroom

Stanley N. Futterman
James N. Blair
Charles L. Rosenzweig
Vanessa Elliott

**MEMORANDUM FROM THE CRIMINAL JUSTICE SECTION
TO THE MEMBERS OF THE HOUSE OF DELEGATES, NYSBA**

AUDIO-VISUAL COVERAGE OF CRIMINAL PROCEEDINGS

Summary

Based upon our review of the Report of the Committee on Audio-Visual Coverage of Court Proceedings, Hon. Burton B. Roberts, Chair ("the report"), presentations made at the C.J.S. Executive Committee by George Freeman (Chair of the NYSBA Media Law Committee) and Jack T. Litman (dissenting member of the Roberts' Committee), the Criminal Justice Section endorses the proposal to make the current "temporary" statute (Jud. L. § 218) permanent, with one important proviso: there shall be no coverage of a trial if counsel for a party objects.

Thrust of Report - General Terms

The report argues that cameras in the courts educates the public, fosters "the public trial" and puts the attorneys and judges on their best behavior.

Opponents expressed concerns regarding impact on witnesses, lost value of exclusion of future witnesses from the courtroom and possible "grandstanding" by the attorneys or judge.

Criminal Justice Section's Reaction

The Criminal Justice Section is composed of prosecutors, defense lawyers, judges and others in the criminal justice system. We start from the premise that the paramount function of a trial is a fair resolution of the case, totally untainted by improper outside influences. In criminal cases, those concerns are of constitutional dimension. We next ask whether cameras in the court might impinge on these values.

There is, of course, no "right" to camera access to the courtroom (else a statute would not be needed). Nor is televised coverage essential to the citizenry's comprehension of court proceedings in general or its acceptance of the result of a particular trial.

In many Anglo-Saxon countries the *sub judice* rule bans press comment on pending cases, and there are no reports of wide-spread public mistrust. And, here in America, where controversial trials have been broadcast, gavel-to-gavel, dissatisfaction with one recent verdict resulted in massive rioting.

Finally, while we recognize the "editorial judgment" rule implicated by First Amendment considerations, we cannot minimize that the current reality of cameras in the court: an eight second sound bite of lurid description.

We also recognize, however, that some of the claimed virtues of cameras in the courtroom are real; the issue is the tension between those values and fair trial rights.

Thrust of Report - Statistical Surveys

The report states that "the vast majority of witnesses report that camera coverage had minimal impact on them" (emphasis added). The Criminal Justice Section is not comforted by the observation, because of the pregnant negative.

Most relevant is a 1991 New York survey cited in the report - - "62% of the attorneys noted that witness testimony was not affected by coverage [leaving 38%], and *only 5% reported that a witness would not testify* because of the presence of cameras."

Other surveys cited - - Florida (53% of witnesses "not at all nervous," 26% only slightly nervous [leaving 21%]); Iowa (88% of judges say witnesses unaffected); California (85% of witnesses reported no reluctance); Nevada (72% of witnesses "not at all" nervous, 13% only "slightly" nervous); Arizona (96% of witnesses not made nervous); Kansas (83% of witnesses not concerned that they might be harmed); Virginia ("only 6%" of witnesses reported that cameras distracted them and 14% reported they made them nervous); Ohio (30% of witnesses reported cameras distracted them and 19% reported fear of harm); New Jersey ("only about 15%" of witnesses reported cameras affected their desire to participate in the trial) and Maine (94% of witnesses reported that cameras did not divert their attention, 28% stated that cameras made them more uncomfortable, 90% stated their willingness to participate was unaffected by cameras).

The Criminal Justice Section's Proposal

We re-iterate that the function of a trial is a fair resolution of the case, totally untainted by improper outside influences, and in criminal cases, that mandate is over-riding.

No potential witness for either side should be lost, or rendered "more nervous" or "distracted" or "more fearful" because of the supposed educational (or entertainment) value of televising their testimony. None of these are worth a whit, compared to society's interest in an accurate determination of the issues.

Nor does the "blue dot" solve the problem: New York has always had it and yet the first figure given is from New York, where 5% of the attorneys reported the loss of a witness in reaction to cameras in the court. A blue dot may mean that strangers cannot recognize the witness; but family members, co-workers, neighbors, friends (and enemies) do not need a televised image. No similar consideration is afforded the accused, although legally presumed innocent.

To the Criminal Justice Section, the conclusion is clear. It is counsel for each party who best knows the fears and concerns of their witnesses. With the "seven-day rule" there is an opportunity to evaluate the potential impact of cameras on witnesses. In New York criminal practice, neither party is obliged to list witnesses, or even disclose them, prior to trial. Thus, the judge is in no position to make this assessment as to any particular individual, and no change in those rules is suggested in the report.

The advocates discuss educating the public generally about our legal system. If one trial is not telecast, another can be: each has its value in showing the public how the law and court system work. Giving the parties the opportunity to exercise their informed judgment does not mean that no cases would be televised. Assuredly many attorneys are not averse to publicity and might well believe that the cited advantages will not hinder a fair result in their particular case. However, when an attorney believes a witness might be lost or unduly affected, and the client's due process and fair trial rights impinged upon, that constitutional concern is paramount.

With this proviso added, the Criminal Justice Section endorses the report of the Committee on Audio-Visual Coverage of Court Proceedings.

PROPOSED AMENDED MOTION

The New York State Bar Association supports the proposed statutory changes to Judicial Law § 218, with the following alteration of sub-section 5:

**“Consent. (a) [With the consent of counsel for all parties]
Audio-visual coverage of judicial proceedings[,] except for
arraignments and suppression hearings, shall not be limited[,]
~~by the objection of counsel, parties or jurors,~~ except for
a finding by the presiding trial judge of good or legal cause.**

(Deletions are stricken through, additions are in brackets and underlined)

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PLEASE RESPOND TO:

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March 5, 2001

BY HAND DELIVERY

Paul Michael Hasset, Esq., President
New York State Bar Association
BROWN & KELLY, LLP
1500 Liberty Building
420 Main Street
Buffalo, New York 14202

Re: REPORT OF THE SPECIAL COMMITTEE
ON CAMERAS IN THE COURT

Dear Paul:

Your letter of February 5, 2001, invited comments from the various Sections on the Report of the Special Committee on Cameras in the Courtroom.

The Criminal Justice Section has carefully followed the issue of cameras in the court for many years. We studied the draft report of the Special Committee and had a lengthy debate on the topic at several recent meetings. Our Section has voted overwhelmingly to support the allowance of cameras in the court provided the consent of the parties is obtained.

I would make two brief points about our position. First, given the reality that the vast majority of cases in which there will be any interest in televised coverage will be criminal cases, we feel the opinion of

Paul Michael Hassett, Esq., President
March 5, 2001
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the Criminal Justice Section is entitled to careful consideration.

Second, this position is, in fact, the current position of the State Bar, having been adopted by the House of Delegates in 1994 on the recommendation of the Criminal Justice Section.

In support of our position, I enclose the following materials:

1. Resolution of the Criminal Justice Section dated January 25, 2001; and
2. Report of Criminal Justice Section, dated 1994.

Sincerely,

Vincent E. Doyle III

sb
Enclosures

cc: (w/enclosures)
Special Committee on
Cameras in the Courtroom (fax & mail)
John A. Williamson, Jr. (fax & mail)



New York State Bar Association

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Dawn Florio

RESOLUTION

WHEREAS, the New York State Bar Association Criminal Justice Section having considered and debated the issue of audio-visual coverage of court proceedings, and having reviewed the draft report of the Special Committee on Cameras in the Court, it is hereby

RESOLVED, that the New York State Bar Association Criminal Justice Section believes that any audio-visual coverage of judicial proceedings should proceed only with the consent of counsel for all parties, and it is further

RESOLVED, that the New York State Bar Association Criminal Justice Section recommends to the House of Delegates of the New York State Bar Association that it endorse this resolution and reaffirm its support of a provision which would require consent of counsel for all parties prior to any audio-visual coverage of judicial proceedings.

Adopted by the Criminal Justice Section of the New York State Bar Association at a general meeting on January 25, 2001.

DATED: New York, New York
January 25, 2001

Vincent E. Doyle III, Chair
Criminal Justice Section
New York State Bar Association



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

GLORIA DAVIS
Assemblywoman 78th District

PLEASE REPLY TO:
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MAJORITY WHIP
CHAIR
Subcommittee on Teen Pregnancy
COMMITTEES
Children and Families
Health
Housing
Social Services
Ways & Means
MAJORITY STEERING COMMITTEE

March 20, 2001

House of Delegates
New York State Bar Association
1 Elk Street
Albany, New York 12207

Dear Delegate:

It has come to my attention that the New York State Bar Association's House of Delegates is meeting on March 31, 2001 to consider a report of the Special Committee on Cameras in the Courtroom. The report recommends that the State Bar Association change its longstanding policy concerning audiovisual coverage of courtroom proceedings by eliminating a party's right to consent to television coverage.

If you have even the slightest doubt that allowing audiovisual coverage of civil and criminal court proceedings will enhance every citizen's right to a fair trial, I strongly urge you to retain and uphold the current seven-year-old policy of the State Bar Association requiring party consent for such coverage.

Since 1997, I have sponsored legislation (A.2198 of 2001) in the New York State Assembly that authorizes trial judges to permit audiovisual coverage of criminal proceedings -- provided consent has been obtained from both the defendant and the People. This legislation enjoys widespread support as it is co-sponsored by 23 Assemblymembers from around the state.

Some proponents of cameras in the courtroom argue that if party consent is necessary as part of our audio-visual policy, coverage will be non-existent. There is no compelling evidence to support this view. Research conducted by the New York State Defenders Association in all the consent states identified by the Special Committee found that no administrative court office keeps the data necessary to evaluate the frequency of coverage in their respective states. Without this data, it is impossible to conclude that consent will effectively rule out coverage.

Cameras in Court
Page Two

In addition, since 1989, New York's camera policy has required party consent before arraignments and suppression hearings. The percentage of applications for coverage granted between 1989 and 1993 was relatively consistent with the percentage granted between 1987 and 1989 when consent was not required. Over the years, the various committees commissioned to study cameras in the courtroom in New York, have heard testimony from defense lawyers indicating that they will routinely consent to coverage.

After 14 years of study, there is still a great deal of debate over the validity of allowing cameras in the courtroom. My bill does not attempt to resolve that debate. It is instead designed to preserve the right of the defendant (the individual) over the rights of the television media.

Requiring consent will ensure that justice is administered fairly and equally. It demonstrates that New York is serious about protecting the rights of all its citizens and sends a strong message to the television media that coverage is not for exploiting victims, harassing defendants and sensationalizing cases.

The Criminal Justice Section of the New York State Bar Association, the New York State Association of Criminal Defense Lawyers, the National Association of Criminal Defense Lawyers, the New York Civil Liberties Union, the American Civil Liberties Union, the New York County Lawyers Association and the Monroe County Bar Association all call for party consent as the guideline for cameras in the courtroom.

You have the opportunity to stand with these groups, and continue the reasonable policy of the New York State Bar Association that strikes a balance between the media's desire for access to courtrooms, and the privacy of the litigant. I urge your continued support for party consent.

Sincerely,



Gloria Davis
Member of Assembly, 79th AD

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John R. Dunne,
Senior Counsel

March 19, 2001

The House of Delegates
New York State Bar Association
One Elk Street
Albany, New York 12207

Dear Delegate:

The House of Delegates will be asked at its March 31st meeting to approve what I believe to be a radical proposal to change the State Bar Association's longstanding policy concerning audiovisual coverage of courtroom proceedings. Specifically, the report of the Special Committee on Cameras in the Courtroom recommends, unwisely in my opinion, elimination of a party's right to consent to television coverage.

I urge you to retain the Association's 7-year-old policy, which requires party consent before cameras may invade the neutral space of a New York courtroom.

Fourteen years ago the Legislature adopted the first of four experiments that lifted - temporarily - the 50-year-old legislative ban on TV in the courtroom. As a former Chair of the State Senate Judiciary Committee, I have watched the experiment with more than passing interest and, after repeated trial periods, have concluded that cameras in courtrooms are not a good idea and that their long-term negative effects are only now beginning to truly show themselves. I recognize that the State Bar's current position - which already supports cameras in court - is an eminently levelheaded accommodation between two reasonably-held, divergent views. I urge the House of Delegates to maintain the Association's current position.

The first of the divergent pro-cameras views is characterized by the Special Committee's report. It suggests a value for TV coverage, provides no meaningful role for lawyers or clients in the cameras decision, favors commercial press interests, and would leave judges who are unacquainted with the particulars of the case, the peculiarities of the witnesses or the privacy concerns of the party to make the decision on nationwide press coverage of a particular matter, without party consent.

The second view favors cameras in court for the same reasons as the Special Committee but provides a safeguard which requires that each party consent to coverage before a judge may order it.

It is this latter eminently reasonable position held by NYSBA since 1994 that is at stake in the current vote. I would like to outline the problems I see with cameras, provide the data which supports the current bar position and urge that the current position be maintained.

First, despite rhetoric to the contrary, Civil Rights Law section 52 is still the law in New York State. No first amendment right to broadcast courtroom proceedings has been recognized by the United States Supreme Court or our Court of Appeals, and the press may not currently intervene in courtroom proceedings, *Matter of Santiago v Bristol*, 273 AD2d

813 (4th Dept. 2000) *app den* 95 NY2d 847 (2000) *lv den* 95 NY2d 848 (2000).

Since 1987, there have been four experimental periods and four legislatively mandated reports by OCA. Each reporting period demonstrated genuine concern about the effect on witnesses, jurors and the public. Yet, each report ignored the expressed concerns and recommended permanency.

In 1989, the legislature was informed that defendants were forced to come to arraignments with paper bags over their heads, bench conferences and lawyer client conversations were overheard, proceedings were reenacted for the press, and suppressed evidence was photographed. In spite of these problems, OCA recommended making cameras permanent. But the legislature amended the experimental bill to protect citizens.

In 1991, after the second experiment, OCA again recommended making cameras permanent, but social scientists strongly criticized the credibility of the report. In addition, the Association's Criminal Justice Section, relying on OCA's own data, expressed strong concern about the impact on nervous witnesses. In what is quite possibly the most shocking revelation to come out of the report, OCA's own data conclude that 5% of attorneys responding stated that one or more witnesses refused and did not testify because of audiovisual coverage. As a result, the victims' community rose up in anger over cameras in 1991; and there was a one-year hiatus in the experiments from 1991-1992.

After the third (1992-1995) and fourth (1995-1997) phases of the experiment, OCA again recommended permanence. Each of the OCA recommendations was made over strong dissents (which the Special Committee has chosen to ignore in its report). Moreover each of those reports, like their predecessors, provided ample data of concern to members of this House that should not be ignored. The 1991 report presented data showing 19% of jurors thought that the fairness of trials would be negatively affected. The 1997 (Feerick) report's judicial survey showed that 37% of respondents felt cameras tended to make judges issue rulings they would not otherwise issue if cameras were not present.

The Feerick Committee's report was a significant advance over the previous efforts in that the attitudinal data presented was the result of a broad survey technique and tried to capture judicial and public opinion. The findings are striking but, unfortunately, were downplayed or ignored by the Feerick Committee itself as well as this Special Committee. A few of the important findings are summarized below:

A poll of New York State registered voters commissioned by the Feerick Committee and conducted by the Marist Institute showed that:

- 61% felt that it was a bad idea for trials to be shown on television
- 65% felt that television cameras in the courtroom tend to sensationalize trials
- 62% felt that television cameras get in the way of a fair trial
- 43% felt that the presence of cameras would make them less willing to serve on a jury
- 70% would not want a civil trial in which they were a party televised
- 68% would not want a trial televised in which they were the victim of a crime
- 54% would be less willing to testify as a witness to a crime if there were cameras in the courtroom

Results from the Feerick Committee's own Judicial Survey showed that:

- 87% of judges agreed that television coverage transforms sensational criminal trials into mass-marketed commercial products
- 80% of judges agreed that television coverage is more likely to serve as a source of entertainment than education for the viewing public

- 52% of surveyed judges disagreed with the statement, "Television coverage has enhanced public understanding of New York's judicial system"
- 59% of surveyed judges disagreed with the statement, "Television coverage has had a positive effect on New York's criminal justice system"

These findings were not truly new. As early as 1991 a scientific survey conducted by researchers at Northeastern University showed that:

- 48% of all New Yorkers polled would be less willing to testify in the presence of cameras if they were the victim of a crime
- 52% of New Yorkers from high crime areas polled would be less willing to testify in the presence of cameras if they were the victim of a crime

In spite of these attitudinal surveys, the Special Committee's report repeatedly seeks to assure the House of Delegates that cameras in the courtroom have "no adverse effect" on the proceedings. The fact is, there is near complete unanimity in the research community that no conclusive scientific proof exists regarding the actual impact of cameras on trial participants. This is best stated by a study which appeared in the Special Committee's bibliography, in which the authors stated:

"Although most states already have made policy decisions about EMC [Electronic Media Coverage], the empirical data base has not and does not scientifically support conclusions concerning the causal impact of EMC on witness behavior."

Borgida E., DeBono K.G. & Buckman L. "Cameras in the Courtroom: The Effects of Media Coverage on Witness Testimony on Juror Perceptions" *Law and Human Behavior*. 14(5):1990 p. 489

The current position of the Bar is eminently reasonable and a necessary accommodation between competing interests; it should not be altered. The position expressed by AOL Time Warner's Court TV is that if party consent is part of our cameras policy, coverage will be non-existent. I believe this is simply not true.

- Defense lawyers were witnesses before every committee including the special committee. Many share the view of the committee and will routinely consent to coverage.
- Since December 1989 the camera rules in our state have required consent before arraignments and suppression hearings. The percentage of applications granted remained relatively constant from the period 1987-1989 (90.8%), when no consent was required, through the period 1989-1993 (80.7%), when consent was required. The New York evidence reveals that New York lawyers will consent in sufficient numbers to accommodate the press and still protect litigants.
- Despite Court TV's contrary representation to the committee, there has been coverage in consent states. High profile criminal cases in Tennessee at the time it was a consent state such as: *Tennessee v. Bondurant*, *Tennessee v. Keith Johnson*, *Tennessee v. Drucker* and *Tennessee v. Frazier* were all televised, the latter three by Court TV itself. In Oklahoma, consent was given in such notable capital cases as *Oklahoma v. Gilley*. In Arkansas a capital case involving the death of three young boys was covered gavel-to-gavel and made into a feature film by HBO called "Paradise Lost."
- The 1991 Crosson Report presented the results of investigations into reported violations of Judiciary Law §218, involving among other things, violations of the

consent requirement. OCA's own investigation showed that of the forty-three individual cases referred for possible consent violations, twenty-two (51%) were actually instances where the defendant explicitly gave consent or did not object to audio-visual coverage.

- A survey of the administrative court offices in all the consent states was performed during the pendency of the Special Committee's deliberations. No administrative court office was found to keep data on the frequency of coverage under their various rules. The House should not therefore rely on the anecdotal reports of a commercial television company urging that consent doesn't work when the legal offices required to collect court data don't possess that information.
- The American Civil Liberties Union and the New York Civil Liberties Union, hardly First Amendment slouches, both favor cameras in court only with party consent.
- Consent is the position of the New York State Association of Criminal Defense Lawyers and the National Association of Criminal Defense Lawyers, two groups whose members could gain great prestige by the routine availability of courtroom coverage.
- Party consent is the position of this Association's Criminal Justice Section and Special Committee on Public Trust and Confidence in the Legal System.
- The New York County Lawyers' Association and the Monroe County Bar Association also support a consent provision.

The media like to refer to "party consent" as a "veto" by litigants. Yet consent by parties to changes in the courtroom paradigm is a routine aspect of legal practice. We usually refer to this as the "waiver" of a party's right not the "veto" of some third party's interest. Consent in this context is the ordinary manner in which lawyers proceed to change procedures in the courtroom (i.e. defendant must consent to court appearance by closed circuit television, CPL §182.20; the defendant must consent to a non-jury trial, CPL §320.10; a defendant must consent to the replacement of a sworn juror with an alternate after deliberations have begun, CPL §270.35; etc.)

We should not take a different course when it comes to allowing the broadcast media into court.

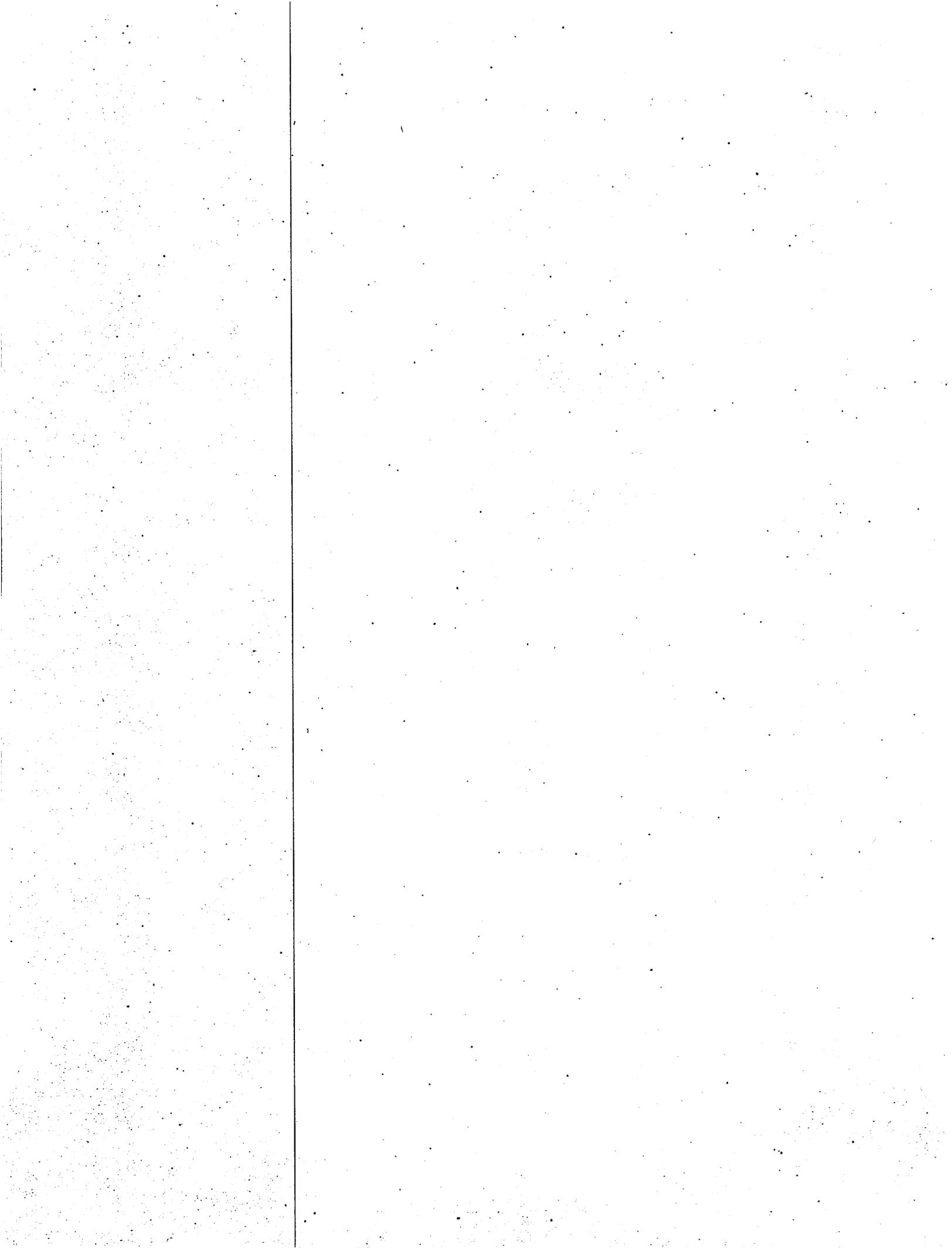
Ultimately, this is not a question of whether judges or lawyers would play to the camera. It is not a debate over whether the court system is afraid of public scrutiny. It is not about a chance to provide educational opportunities for citizens to learn about the court system and the litigation process. Rather, your decision in this matter is based on our collective duty to protect the rights of all New Yorkers -- whether plaintiffs, defendants, witnesses or jurors -- to a fair trial.

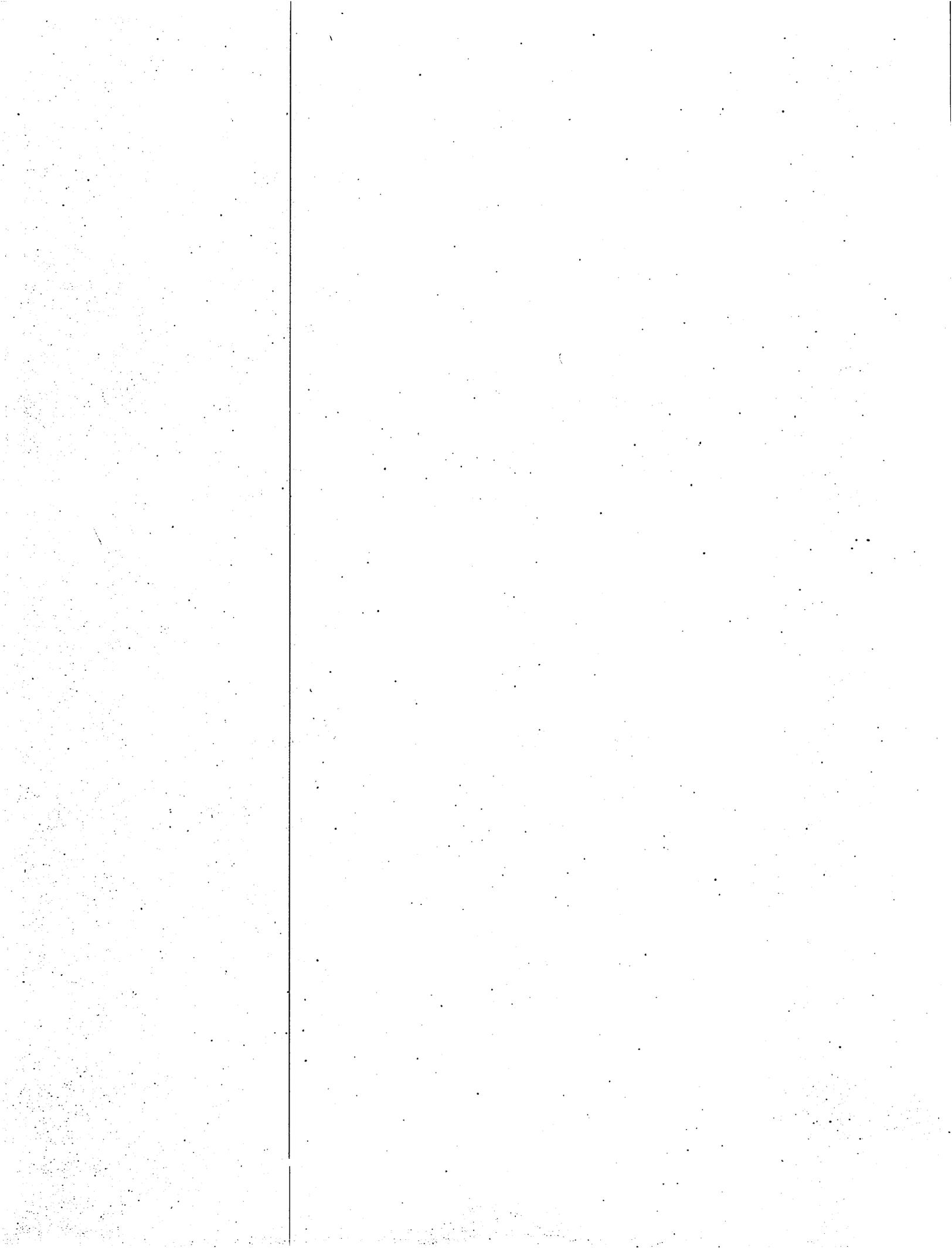
A fair trial, unimpeded by external factors, is essential to democracy. I urge you to protect this fundamental right, and continue to require party consent to permit cameras in New York's courtrooms.

Sincerely,



John R. Dunne





COUGHLIN & GERHART, L.L.P.

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*** ALSO ADMITTED IN PENNSYLVANIA
** ALSO ADMITTED IN ISRAEL**

March 14, 2001

**Jeffrey M. Fetter, Esq.
Scolaro Law Firm
90 Presidential Plaza
Syracuse, New York 13202-2223**

Re: New York State Bar Association

Dear Jeff:

I reviewed the report of the Special Committee on cameras in the courtroom (SCCC). Generally, I do believe that they have adopted a very workable, practical solution to a problem that can pit attorney and clients against each other. I expect much debate about this issue.

As far as the General Practice Solo and Small Firm Section, I think we should support the report and conclusions reached as a well-thought out compromise and as a work in progress that may need to be tinkered with in the future.

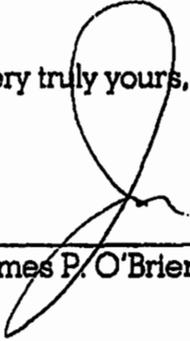
The overriding concern of the report is that the court should be used to educate the public as to what a jury sees and how it reaches its conclusions, not everything that goes on during a trial which is the correct focus.

On another issue, are the minutes of any meetings being circulated? I cannot recall the last time I received minutes of any meeting unless I was at a meeting. I think it would be a great service to keep everyone informed by circulating the minutes to everyone, including those people who are not able to attend a certain meeting. We would be able to keep up to date and have a better understanding of what is going on in the Section. At least provide the information to the Officers and the District Representatives.

March 14, 2001
Page 2

Best personal regards.

Very truly yours,



James P. O'Brien

JPO/rjm

6

A Report and Recommendations concerning: CAMERAS IN THE COURTROOM

by

**An *Ad Hoc* Subcommittee of the Executive Committee
of the**

Health Law Section

New York State Bar Association

November 1, 2000

(APPROVED & ADOPTED

**by a consensus of the
Executive Committee of the Health Law Section.)**

INTRODUCTION

For approximately a ten year period from 1987 to 1997, New York permitted audio-visual coverage of trial court proceedings. The then section 218 of the Judiciary Law allowed cameras in trial courts. In 1997 that statute was allowed to sunset. Since the audio-visual coverage statute lapsed some three years ago, there has been renewed interest in the subject in the wake of the Diallo trial conducted in Albany this past winter, plus other cases, in which New York's statutory prohibition against cameras in the courtroom was held unconstitutional.

The New York State Bar Association has been consistently involved with the debate over the issue of cameras in the courtroom since the inception of the consideration of this concept in New York. The House of Delegates of the New York State Bar Association last visited this topic in June of 1994, where it adopted the position that with the consent of counsel for all parties, audio-visual coverage of judicial proceedings, except for arraignments and suppression hearings, should not be limited, except for a finding by the presiding trial judge of good or legal cause. At that time the House also recommended that the media coverage law be made permanent.

In view of this renewed interest, the issue of audio-visual coverage of court proceedings was, again considered by the House of Delegates and the Executive Committee of New York State Bar Association during their respective meetings at Cooperstown, New York during June 22-24, 2000. The House of Delegates, following the recommendation of the Executive Committee, called for the formation of a special committee to evaluate and make recommendations on the issue of audio-visual coverage of court proceedings in civil and criminal matters. The special committee is chaired by Vincent Buzard, Esq. of Rochester, New York. The special committee was charged with reporting its recommendations to the House of Delegates by the January 2001 meeting.

Page Two

At the July 11th meeting of the Executive Committee of the Health Law Section, several members commented on the subject of cameras in the courtroom. Following from that meeting

Tracy E. Miller, Chair of the Section, appointed Salvatore J. Russo as the chair of a subcommittee of the Executive Committee on Cameras in the Courtroom. She also appointed Robert W. Corcoran, James W. Lytle, and Patrick L. Taylor to this subcommittee.

In advance of its meeting conducted by conference call, Lisa J. Bataille, Administrative Liaison, New York State Bar Association, distributed to the subcommittee members background materials on the subject of cameras in the courtroom. On Tuesday, September 27th the subcommittee met by phone for approximately one hour.¹

On November 1st, the report and recommendations of the subcommittee, set forth below, were discussed, and subsequently finalized and adopted by the Health Law Section's Executive Committee. Please note, however, that several members of the Executive Committee objected to permitting audio-visual coverage in the courtroom. Notwithstanding such objection, all members of the Executive Committee strongly support the protection of patient confidentiality as set forth in the recommendations contained herein.

DISCUSSION

Why Should the Health Law Section Provide Input on this Issue?

At the outset, the subcommittee members recognized that this issue is of far more significance to the criminal bar, where defendants face the loss of precious personal liberty, than health law practitioners. In addition, it appears somewhat compelling that certain victims of crimes, particularly sex crimes, should have their privacy protected. Furthermore, the interests of safety are clearer in the case of undercover police, as well as certain witnesses to crimes.

The subcommittee conducted some soul-searching as to what significant interests are at stake so as to make this issue of any importance to the Health Law Section of the Bar Association. Initially, it was posited that cameras publicizing defendants accused of medical malpractice would unduly harm the professional reputations of the physicians, hospitals and other health care providers involved in the action. While this concern is not insignificant, and is particularly troublesome where the defendants are subsequently found not liable, this interest did not seem compelling enough to limit media access. Arguably, the interests here are no greater than the interests that any other professional or individual would have where he/she is found not liable for malpractice/negligence.

¹Mr. Robert W. Corcoran was not able to participate in the conference call, nor attend the Section's Executive Committee meeting. However, Mr. Corcoran written comments were submitted to the Executive Committee for consideration with the Preliminary Report of the subcommittee on Cameras in the Courtroom.

Page Three

Moreover, the subcommittee members further acknowledged that, generally, medical malpractice actions will not be the focus of media attention, based upon the limited numbers of such actions which received media attention during the ten year period in which access was permitted.

The subcommittee then focused on the interests of protecting proprietary information which health care providers and organizations may possess. However, it was quickly recognized that this type of concern was not particular to the health care field, nor was the court without remedy to protect such legitimate interests.

Finally, the subcommittee unearthed the almost self-evident significant concern which is unique to the health law bar, the protection of patient confidentiality. Patient confidentiality is the cornerstone upon which effective patient care and treatment is constructed. Due consideration by the court needs to be given because of the potential damage to the patient-provider relationship which may result from a disclosure by a health care provider testifying at a trial. This is particularly evident where the provider may be compelled to disclose information about substance abuse, HIV infection, sexually transmitted diseases, or mental illness.

RECOMMENDATIONS

The subcommittee recommends the following, that:

- **The Health Law Section support the position that the Association endorses: the passage of an audio-visual coverage statute which does not sunset, subject to any limitations the Association deems appropriate; and,**
- **The Health Law Section supports the inclusion of an assessment of the potential harm to the patient-provider relationship as a factor for consideration by the court in determining whether cameras are appropriate in a particular action.**



New York State Bar Association

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COMMITTEE ON MEDIA LAW

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Special Committee on Cameras in the Courtroom
New York State Bar Association
One Elk Street
Albany, NY 12207
ATTN: A. Vincent Buzard, Esq., Chair

Re: Report of the Special Committee on Cameras in the Courtroom

Dear Mr. Buzard:

I am writing in response to the Memorandum of our President, Paul Hassett, dated February 5, 2001 to set forth the comments of the Committee on Media Law regarding the Report of the Special Committee on Cameras in the Courtroom. We understand that some of our concerns will be reflected in the concurrence of Stephanie Abrutyn, Esq., a member of both committees, which will be included in the Report as transmitted to the House of Delegates. In addition, we wish to emphasize that our Committee continues to believe that the present statutory prohibition of camera coverage pursuant to Civil Rights Law § 52 violates the First Amendment and Article I, section 9 of the New York Constitution. As you know, that belief is shared by a number of members of the New York Judiciary, as reflected in Justice Teresi's ruling in the "Diallo" case, People v. Boss, 182 Misc. 2d 700 (Albany Cty. Sup. Ct 2000), and in last week's decision by Justice LaBada in People v. Schroedel, Indict. No. 115-99, Slip Op. (March 5, 2001)(a copy of the latter decision is attached).

At the outset, the Media Law Committee wishes to commend your Committee for all of its work and for the resulting Report. The Report's recommendations, if adopted,

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will constitute a vast improvement on the earlier position of the New York State Bar Association that audio-visual coverage of trials in this state should be permitted only with the consent of all parties. Nonetheless, the current version of the Report proposes certain provisions which our Committee finds unacceptable.

I. Permanency

The Report does not indicate whether any proposed legislation would be permanent or experimental. We believe any proposed legislation should not be enacted on an experimental basis. In view of this State's positive experience with cameras in the courtrooms for an extended period prior to 1997, when the last experimental legislation, Section 218 of the Judiciary Law, expired, we believe any legislation which is otherwise acceptable should be permanent. We are not aware of a single instance in which any criminal or civil proceeding in New York has been disrupted or impaired because of audio-visual coverage. Regardless of how highly publicized or emotionally charged a particular case may be, audio-visual coverage has disrupted neither the dignity nor the decorum of the courtroom.

It is clear that the past experiments in this State were successful. Cameras and microphones did not and do not adversely affect the legal process. They are simply a modern, sophisticated technique for enabling more extensive and more reliable access to public court proceedings than the press can otherwise provide. The inevitable result is a more informed citizenry and a citizenry with enhanced confidence in the judicial system. In the Diallo case, there is no question that audio-visual coverage enhanced the public's understanding of the judicial process and of the verdict. The public's ability to see and hear the emotional

testimony of the police officers, as opposed to merely hearing or reading reports about it, was invaluable.

II. Presumptions For and Against Access in Certain Cases

We believe that the objectives of an informed citizenry can best be served by a legislatively-imposed presumption in favor of cameras in all cases. Unfortunately, the Report proposes no such presumption and actually seems to create a presumption against coverage in broadly enumerated categories of cases.

Moreover, under the legislation proposed by the Report, in every case, the trial judge must make a determination granting or denying a request for audio-visual coverage. With a true presumption of access, if there were no objections to the media's request, there would be no need for such a hearing. A presumption in favor of camera access would streamline the current procedures and save judicial time.

The presumption also would relieve judges of the necessity to make potentially arbitrary and inconsistent decisions. Conferring unfettered discretion to judges only serves to undermine our firm commitment to open proceedings by diminishing predictability and consistency. A rebuttable presumption would mean that audio-visual access would remain subject to the ability of every court to exclude cameras and microphones when necessary to protect individual rights, and subject to the ability of each judge to control the proceedings before him in the interests of assuring a fair and orderly trial.

In any case where a participant objects to audio-visual coverage, the trial judge could consider various factors in determining whether the presumption has been overcome.

For example, the judge could evaluate whether such coverage would interfere with the fair administration of justice, the advancement of a fair trial, the rights of the parties, or the welfare of minor children. In addition, the court could require that the audio-visual news media take steps to protect the identity of victims of sexual abuse or undercover police officers without their consent.

We therefore believe that access by electronic and photographic means should be governed by the same principles that govern physical access to courtrooms by the press and public: with the rebuttable presumption that video and still cameras and microphones are permitted in the courtroom.

III. Witnesses' Power to Veto Coverage or To Require that Their Images be Visually or Aurally Obscured

The Report proposes legislation which would give non-party witnesses and parties who testify in criminal and civil proceedings the absolute right to require that their images be visually or aurally obscured while they are testifying. Permitting such witnesses as a matter of right routinely to preclude audio-visual coverage undermines the overall objectives of the legislation. At the very least, the legislation should contain a requirement that the witnesses show good cause for obscuring his or her image or voice. In addition, the Report suggests that "fear" and "damage to reputation" are factors which could constitute good cause for prohibiting entirely a witness's testimony. If witnesses are given a broad right to veto coverage, continuity of a given proceeding will likely be so disrupted as to render cogent coverage impossible.

IV. Prohibition of Coverage in Certain Cases and for Certain Proceedings

The proposed legislation would prohibit audio-visual coverage in arraignments and bail hearings without the consent of all the parties. It would also prohibit any coverage of proceedings which the jury cannot see or hear. Our Committee believes that such proceedings should be subject to the same standards which apply to other proceedings, not to a blanket prohibition of coverage.

V. The Requirement That The Entire Trial Must Be Taped

The Report recommends that broadcasters be required to tape the entire proceeding in any case and file the tape with the Office of Court Administration. We believe that this requirement is ill-advised and is clearly unconstitutional. In addition to its constitutional defects, such a requirement would discourage many broadcasters from making applications to cover trials. In fact, it would conceivably give a monopoly to the few broadcasters who routinely videotape such proceedings from beginning to end. To the extent this requirement is intended to encourage "gavel to gavel" coverage of trials, we fail to see how it accomplishes that purpose, since the legislation does (and constitutionally could not) require that the entire proceeding be broadcast.

VI. The Requirement of 30 Days Notice For Coverage

We believe the Report's recommendation with regard to prior notice is far too strict. In many cases, even though the fact of the trial may be known 30 days prior to its commencement, the news or the import of the trial may not be. The effect of this provision will undoubtedly be to exclude a substantial number of newsworthy proceedings from coverage.

VII. Prohibition of Photographing Jurors Outside the Courthouse

Although a consensus in our Committee agrees that a prohibition against photographing jurors in the courtroom is acceptable, we believe that the Report's recommendation regarding the photographing of jurors extends too far by prohibiting in all cases any portrayal of jurors even if they are outside the courthouse. Although we doubt the media would normally photograph jurors outside the proceedings themselves, one could easily imagine instances (such as allegations of jury tampering in an organized crime case) where such coverage would serve an important public interest. We find the Report's implicit recommendation that the media be required to surrender important First Amendment Rights as a condition to obtaining access to the courtroom unacceptable.

* * * *

We should not dismiss the experience of the other states which permit cameras in the courtroom. A 1994 study by the Federal Judicial Center recommended that cameras be permitted in federal courts, finding that a number of states "report that the majority of jurors and witnesses who experience electronic media coverage do not report negative consequences or concerns." Similarly, the Supreme Court of Florida concluded in 1979, after an analysis of voluminous survey data gathered from trial participants including witnesses, attorneys, court personnel and jurors, that "the presence of electronic media disrupted the trial either not at all or only slightly" and that the reaction of 90% to 95% of circuit judges was that "jurors, witnesses and lawyers were not affected in the performance of their sworn duty by the presence of electronic media." After an 18-month pilot study, including electronic and still

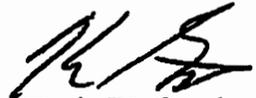
March 14, 2001

Page 7

photography coverage of over 200 cases, California data showed that "none of the postulated disturbance - distraction - decorum effects occurred." In New York, reports prepared in 1989 and 1991 by Chief Administrative Judge Albert M. Rosenblatt and Chief Administrator Matthew T. Crosson recommended that audio-visual coverage be allowed on a permanent basis, as did subsequent reports of Committees chaired by Justice Burton Roberts and Dean John Feerick. Other studies in state after state have come to similar conclusions.

In sum, we believe that our ten year experience with cameras in the courts in New York, as well as the experience of other states, convincingly proves that audio-visual coverage does not impede the administration of justice, but rather enhances the public's understanding of our judicial system. We therefore urge the Special Committee and, in turn, the House of Delegates to adopt the Report with the limited changes described in this letter.

Very truly yours,



Kevin W. Goering

KWG:DG

COUNTY COURT: COUNTY OF SULLIVAN
STATE OF NEW YORK

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION AND ORDER
Indict. #115-99

ANTHONY SCHROEDEL,

Motion

Defendant.

-----X

APPEARANCES: Capital Defender Office
P.O. Box 2113
Empire State Plaza
Albany, N.Y. 12220
By: Barry J. Fisher and Matthew Alpern, Esqs.
Attorneys for Defendant

Hon. Stephen F. Lungen
Sullivan County District Attorney
Sullivan County Courthouse
Monticello, N.Y. 12701
Attorney for the People

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LaBuda, J.

On July 8, 1999 the defendant was charged by Indictment #115-99 charging him with two counts of murder in the first degree, three counts of murder in the second degree, four counts of burglary in the first degree, two counts of criminal possession of a weapon, three counts of attempted murder in the first degree, one count of attempted murder in the second degree and three counts of assault in the first degree.

The Sullivan County District Attorney has filed a timely¹ notice to seek death.

¹ On May 22, 2000 a death notice was filed approximately eleven months after indictment due to protracted litigation re the defendant's attempt to plead guilty to the entire indictment and avoid the death penalty.

The Middletown Times-Herald Record (T-H Record), the most widely read daily newspaper in Sullivan County, has filed an application with the court for an order allowing still photography during the court proceedings. Said proceedings would include pre-trial court proceedings, pre-trial hearings, jury selection and trial.

The Capital Defense Office has filed opposition thereto, specifically seeking an order closing the courtroom to the media during pre-trial hearings but not addressing the "cameras in the courtroom" issue.

The prosecution, in oral argument, sides with the defense in regard to closing the courtroom to the media for pre-trial hearings, but also indicates that written papers will not be submitted and the People will abide by the Court's ruling herein.

It is undisputed that Sullivan County is a sparsely populated rural community consisting of approximately 70,000 residents and that the major source of news information and media coverage for this County is The Times Herald Record newspaper, the Petitioner herein.

The issues herein presented to the Court are:

1. To what extent, if any, should this Court close the capital murder pre-trial proceedings to the media, including pre-trial hearings (Sandoval, Ventimiglia, Molineaux, Huntley and a Mapp/Physical Evidence) and jury selection?

2. To what extent, if any, should this Court allow "cameras in the courtroom"?

The litigants, including the District Attorney, the defendant and the applicant T-H Record were given the opportunity to and did present oral argument herein.

This Court shall deal with each issue as noted above.

CLOSURE OF THE COURTROOM TO THE MEDIA.

The legal issue of closure before the Court in a death penalty case is profound both for the defendants and the public.

It is fundamental that the right of the press and public to attend all aspects of criminal proceedings is guaranteed by The First Amendment of the United States Constitution. Richman Newspapers v. Virginia, 448 U.S. 555, 10 S.Ct. 2814 (1980). The First Amendment right to access has been extended beyond the trial itself, as in Waller v. Georgia, 467 U.S. 39, 104 S. Ct.

2210 (1984). where the Supreme Court noted that the "need for open proceedings may be particularly strong with respect to Criminal Suppression hearings," (see also N.Y. Judiciary Law Section 4).

Historically, for over two hundred years criminal trials have been open to the public and it strains credibility to suggest that our Founding Fathers intended anything but open trials.

The Supreme Court further expanded the contours of this Constitutional right to access in Press Enterprises II v. Superior Court of California, 478 U.S.1, 106 S. CT. 2735 (1986), where the Court held that preliminary hearings cannot be closed absent a "substantial probability" that a defendant's right to a fair trial would be prejudiced by publicity. The Supreme Court held that closure is appropriate only if:

"Specific findings are made demonstrating that. . . the defendant' right to a fair trial will be prejudiced by publicity that closure would prevent, and second, reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights."
478 U.S. at 2, (emphasis added).

Thus, the two prong test articulated in Press Enterprise II, supra, has been endorsed by the Courts of New York's presumption of openness in pre-trial hearings. see, e.g., Matter of Associated Press v. Bell, 70 NY2d 32 (1987); Gannett Westchester Rockland Newspapers v. LaCava, 158 AD2d 495 (2d Dept. 1990); Matter of New York Times v. Demake, 137 AD2d 247 (2d Dept. 1988); Capital Newspapers v. Lee, 139 AD2d 11 (3rd Dept. 1988).

It must be noted, that in all recent New York Death Penalty cases access, except to Sandoval, Ventimiglia and Molineaux hearings, has been granted by the trial judges and the defendant's motion for closure of suppression hearings has been denied. The fact that the District Attorney joins in the present application for closure, is not controlling, nor is it a substitute for the requirements of Enterprises II, supra.

Despite the presumptions of openness in criminal proceedings and of access to the documents filed in connection with them. (Globe Newspaper Company v. Superior Court, 457 U.S. at 605, 102 S. Ct. at 2619), that presumption of openness cannot vitiate the defendant and the People's fundamental right to a fair jury trial. The substantial probability of prejudice demonstrated by "specific findings" of the Enterprises, II, supra, test must be made on a case by case basis taking into careful consideration the unique demographics of the venued county as well as the nature and frequency of the particular media coverage. In the present case, it cannot be gainsaid that the media coverage has been thorough, complete, continuous, emotional and factual.

However, in the instant case the demographics of Sullivan County's limited jury pool is not unlike that of Schoharie County² wherein the murder case of People v. Arroyo, 675 NYS2d 272 was not closed in favor of the public's right to know. (See also, People v. Hansen (Otsego County Court Decision dated March 16, 1998). With historical reference³ and the numerous highly publicized murders in the past, no criminal case in Sullivan County has ever required a change of venue or failed to select a jury.

It must also be noted that closure cannot roll back the press coverage and popular attention already given to this case, nor will closure of routine pre-trial hearings foster public confidence and understanding of criminal justice. Indeed, criminal proceedings behind closed doors are anathema to basic concepts of justice in America.

Thus, "it is fundamental in our society that criminal trials, including pre-trial proceedings, are presumptively open to the public." De Pasquale, supra at p. 376, 401 NY.S.2d 756, 372, E.E.2d 544. New York Judiciary Law Section 4 states, "[t]he sittings of every court within this state shall be public, and every citizen may freely attend the same. . . ." Unless, this

² Schoharie County is a small County, in fact it has less than half of the population of Sullivan County.

³ The most publicized case in Sullivan County's legal history was the capital murder case of Banker and Irwin and despite the unprecedented pre-trial publicity the jury voir dire questionnaire did not show any adverse affect on potential jury selection.

right of public access poses a threat or menace to the integrity of the trial. De Pascuals, supra at p. 377, 401 N.Y.S.2d 756, 372 N.E.2d544.

In the present case all court proceedings¹ to date have been open to the public with the defendant present and all proceedings have been held without threat or menace to the integrity of court proceedings. The publicity and the public's concern have not interfered with the orderly progress of the Court proceedings to date.

In Associated Press v. Bell, 70 N.Y.2d 32, 38-39, the Court of Appeals stated:

"We recognize that suppression hearings pose a peculiar risk in that adverse pretrial publicity could inflame public opinion and taint potential jurors by exposing them to inadmissible but highly prejudicial evidence (Press-Enterprise Co. II v. Superior Court of California, supra; Gannett Co. v. De Pascuals, supra; see also, Matter of Westchester Rockland Newspapers v. Leggett, supra; Matter of Gannett Co. v. De Pascuals, supra). By the same token, suppression hearings frequently challenge acts of the police and prosecutor . . . giving particular value and significance to conducting such hearings in the public eye (see, Walter v. Georgia, supra) . . . Although open criminal proceedings in general and open suppression hearings in particular serve to assure fairness and integrity, there are circumstances when the right of the accused to a fair trial might

¹ Arraignment, motion dates and conferences.

to inhibited or undetermined by unrestricted publicity (Matter of Westchester Rockland Newspapers v. Leggett, supra). " Where a defendant's right to a fair trial is threatened "the trial court must determine whether the situation is such that the rights of the accused override the qualified First Amendment right of access" (Press-Enterprise II, supra).

However, our courts have noted that, the party seeking closure bears the burden of showing that there is a "substantial probability" that the defendant's right to a fair trial will be prejudiced by publicity of the hearing and other court filings, that closing the courtroom would prevent the harm and that reasonable alternatives to closure will not adequately protect the defendant's constitutional rights. Associated Press v. Ball, citing Press-Enterprise II, supra. Once the defendant has shown that there is a substantial probability of prejudice by specific findings which can be averted by closing the courtroom, the party opposing closure has the burden of proposing reasonable alternatives that would protect the "overriding interest" at stake. People v. Ramos, 90 N.Y.2d 490.

Hence, the defendant and District Attorney argue that since this is a capital case, even the chance of prejudice must be avoided. This is simply not the Law. They make no factual showing that there are particular circumstances in this case which carry the substantial probability that prejudice will inure to the defendant in an open airing of the issues, thus requiring the special and extreme recourse of closure.

There is no legislative mandate in this state to close pre-trial hearings in capital cases to prevent publicity of evidentiary issues and pre-trial proceedings. On the contrary, the legislature has mandated open proceedings.⁶ In fact openness is required by Judiciary Law Section 4. Public pre-trial hearings are routinely held in every sort of criminal case and impartial juries are thereafter empaneled including murder cases in this state and throughout the country. See, People v. Hanson, and People v. Arroyo, (cited above) and People v. Francis, Decision and Order #1, October 1, 1998, Dutchess County.

It is only on the showing of specific findings that a significant probability of prejudice will occur that closure would prevent, that the courts are inclined to close the courtroom and seal the records. In both, Matter of Johnson Newspaper Corp. v. Clary, 167 A.D.2d 968, app. dis. 77 N.Y.2d 889, and Matter of Gannett Co. Inc. v. Felvey, 181 A.D.2d 1038, where the court reviewed the defendant's statements and determined that there was a probability that portions, if not all of the statements, would not be admissible at trial, only partial closure was granted. In each case the court closed the courtroom for the Huntley hearing on the grounds that publicity of the inadmissible evidence would taint the jury pool.

⁶ Under the present death penalty trial procedure, the unique individual juror voir dire as mandated by statute is not a "closed" proceeding and is open to the public.

This Court, as in Arroyo, supra, has reviewed the Grand Jury testimony and purported statements of the defendant and the CPL Section 70.30 notice. As in Ball, supra, this Court cannot say whether there will be any inadmissible evidence or whether disclosure of potentially excludible evidence would, in fact, impede finding impartial jurors. The fact that this is a capital case, in and of itself, does not dictate closure. Any preconceived ideas about the case which potential jurors may have at the time of trial, can be dealt with on voir dire to assure that a fair and impartial jury is empaneled. No other showing has been made which rises to the level of "substantial probability" of prejudice that closure will now prevent. See also, People v. Harris, 57 N.Y.2d 335. Both the District Attorney and the defense counsel have adequate remedies to explore pre-trial publicity during extensive voir dire and to make applications for change of venue if and when that becomes an issue.

By denying public access to the suppression hearings on a "possibility" that there might be tainted, nonpublic evidence that might impair the selection of an impartial jury - which could very likely be said of every suppression hearing in every highly publicized case - the trial court would improperly close the door on petitioners' First Amendment rights. See also, People v. Burton, 189 A.D.2d 532. (3rd Dept.)

On the other hand, it is because this is the most serious of Criminal allegations, a capital offense that the public is entitled to know how the case is proceeding! The public through its elected officials in the State Legislature and the Governor has seen fit to reinstate capital punishment in our system of justice. The citizens of this County have the right to be aware of every stage of such capital proceedings to assure that the system, whereby a person found guilty of a capital crime may pay with his or her life, affords that person the fair and impartial administration of justice through the entire proceedings. The Court finds that the public has an overwhelming interest in this matter in keeping all proceedings open. The public interest in this case has not been overridden by the defendants' speculative assertions that publicity of "routine" pre-trial hearings may prejudice the jury to the extent that closure now, would prevent or that it will make the parties work harder in jury selection.

As to those portions of the motion regarding all other pre-trial hearings and papers related thereto, the defendants have not met their burden of proof to demonstrate an overriding interest sufficient to defeat the public's right to access; and that closure of the courtroom now would prevent the potential prejudice during pre-trial hearings and to seal or redact the related court records is denied.

Accordingly, the Court renders this Decision regarding closure:

ORDERED, that the Huntley and Madd/Physical Evidence Suppression hearings will be open to the public including the media, and it is further,

ORDERED, that the Sandoval, Ventimiglia and Molineaux hearings shall be closed to the public including the media, and it is further

ORDERED, that the Court's decisions in the pre-trial hearings shall be sealed until the jury is selected, and it is further

ORDERED, that jury selection shall be open to the public including the media, and it is further

ORDERED, that all attorneys are cautioned that it is expected that each of them will scrupulously adhere to the dictates of 22 NYCRR 1200, 38 (DR-7-10) relating to pre-trial publicity at all stages.

CAMERAS IN THE COURTROOM

In 1952 the legislature enacted Civil Rights Law §52 which, barred audio-visual equipment for broadcasting or televising from a courtroom.

In 1987 the legislature enacted a ten year experiment allowing cameras and audio equipment in courts under Judiciary Law §218. This experiment expired on June 30, 1997 and has not been renewed.

The Chief Judge promulgated Rule 131 in response to Judiciary Law §218. This rule outlines the procedure necessary to allow cameras and audio equipment in a courtroom without jeopardizing due process, keeping the dignity of the judicial process and without becoming a hindrance to the proceedings. However, Rule 131 became ineffective on June 30, 1997 when the legislation above expired. See, Rule 131.1(b).

Rule 29, which is still in existence, prohibits audio-visual equipment (including still pictures) anywhere in a courthouse except with permission of the Chief Administrative Judge or his designee.

In 1997, when the cameras in the courtroom legislation expired, the designee of the Chief Administrative Judge in the Third Department gave blanket approval for cameras anywhere in the courthouse except the courtroom. However, if a trial judge wants to bar cameras in the courthouse he must get permission from the Administrative Judge.

In 2000, Judge Taresi, Supreme Court, Albany County, (in a case entitled People v Boss, 182 Misc2d 700-the "Diallo" case with a change of venue from NYC to Albany), found Civil Rights Law §52 to be unconstitutional and allowed cameras in the courtroom using the criteria of Rule 131.

Thereafter, since no Appellate Division has ruled on the subject, the decision to allow cameras in the courtroom, as in Boss rests with the sound discretion of each trial judge.

"This Court cannot help but basically agree that the Holmesian "felt necessities of time" have not well treated §52's original intent. It has been powerfully argued, that (CCI's) submission, that §52 of the Civil Rights Law is hopelessly anachronistic and needs a permanent shelving..." People v Boss, supra, quoting Judge Rosen in Matter of Clear Channel Communications, Albany Cty Ct., May 3, 1999.

All criminal trials in America must be open to the public and, consequently the media, under the United States and New York Constitutions, except under clear and compelling reasons to close such proceedings. The question is has the twenty-first century come to recognize a presumptive constitutional right to allow a nineteenth century technology, i.e., cameras in the courtroom?

It has been held that the media's First Amendment rights do not include cameras in the courtroom of a criminal trial, See, Hester v Texas, 381 US 555 (1965), but doesn't the public have a right to see what goes on in the courtroom?

The State of New York's experiment under Judiciary Law §218, from 1987 to 1997, showed that it was time to allow cameras in the courtroom given the advancements in technology and the ever changing ways society gets its news.

Though New York let its cameras in the courtroom experiment sunset in 1997, 48 other states allow cameras in the courtroom and 37 states televise trials. People v Bass, supra.

Rule 131 gives ample safeguards for the court to employ to allow the dignity of the proceedings and an orderly judicial process.

It has been stated the "death is different" and the public has a right to an open courtroom whether it is through their own eyes or the recording eyes of the media.

Accordingly, based upon the above, it is

ORDERED, that the application By the Middletown Times-Herald Record for still photography during the above captioned matter is granted, and it is further

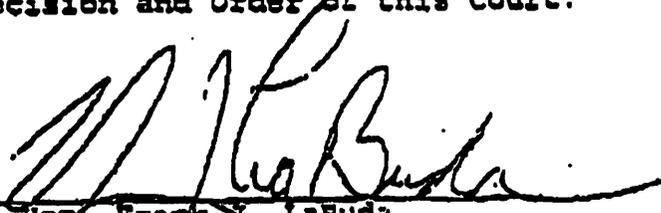
ORDERED, that said still photography shall be permitted during the pre-trial Huntley and Mapp/Physical Evidence suppression hearings and the trial commencing with opening statements, and it is further

ORDERED, that only the specially designated section of the courtroom and the specially designated area in the courthouse shall be used for the taking of still photographs, and it is further

ORDERED, that Rule 131 shall be in effect during the above captioned matter.

This shall constitute the Decision and Order of this Court.

DATED: March 5, 2001
Monticello, N.Y.


Hon. Frank J. LaBuda
Sullivan County Court Judge
and Surrogate

CLARK, GAGLIARDI & MILLER P.C.

ATTORNEYS & COUNSELORS AT LAW

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COUNSEL

MORTON S. SILBERMAN

February 12, 2001

**A. Vincent Buzard
Chair, Special Committee on
Cameras in the Courtroom
New York State Bar Association
One Elk Street
Albany, NY 12207**

Re: Report of the Special Committee on Cameras in the Courtroom

Dear Vince:

I enjoyed looking at the splendid work you did on the Cameras in Court issue.

I fully support the conclusion that cameras with safeguards be permitted in our courts. The fundamental point as we previously discussed, is that the courts belong to the people, not the Judges, lawyers and litigants alone. We are a populous people and we all can't cram into small courtrooms. Of course, there must be safeguards for children, undercover police and reluctant witnesses and others such as jurors.

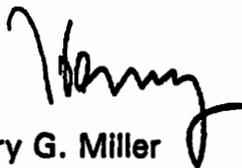
However, I would go further on one point. I would say that there should be a presumption that cameras are allowed and place the burden on those who would limit or exclude them.

Page 2

February 12, 2001

My compliments on an issue which has proved to be somewhat difficult.

Very truly yours,

A handwritten signature in black ink, appearing to read "Henry", written in a cursive style.

Henry G. Miller

HGM:cnp



Monroe County Bar Association

March 6, 2001

Paul Michael Hassett, Esq.
President, NYSBA
One Elk Street
Albany, New York 12207

Re: Report of the Special Committee on Cameras in the Courtroom

Dear Paul:

I write on behalf of the Monroe County Bar Association (MCBA) to report on the MCBA's position on the Cameras in the Courtroom proposal. We recognize the hard work and effort that went into the creation of the report by the Special Committee on Cameras in the Courtroom and appreciate the volunteer hours spent by Vince Buzard and his committee on this issue. I would be remiss, however, if I did not express the MCBA's dismay at having been given less than one month to review and analyze this very important issue.

Despite the short time frame in which we had to work, we circulated the Special Committee's report to our Board of Trustees, Criminal Justice Section and Litigation Section for comment. On February 27, 2001, our Board of Trustees met and heard presentations by Vince Buzard, in support of the proposal, and Brian Shiffrin, in opposition. After discussion and due deliberation of the issues, the Board of Trustees adopted a resolution opposing allowing cameras in New York State courtrooms unless all parties and victims in criminal cases consent to such coverage and all parties consent in civil cases.

The MCBA Board of Trustees has concluded that the benefits of permitting cameras in the courtroom are far outweighed by the potential harm to witnesses, crime victims, jurors, defendants, parties and, ultimately, to the integrity of the judicial process. Both Federal and State courts have clearly and consistently held that there is no constitutional right to audio-visual coverage of courtroom proceedings. By contrast, there does exist a constitutional right to a fair trial, which the MCBA feels will be negatively impacted by allowing cameras into the courtroom without appropriate consent.

We thank you for giving us an opportunity to be heard on this important issue.

Very truly yours,

Cheryl A. Heller
President, MCBA

cc: Vincent Buzard, Esq.



**New York
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Association**

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**By fax: (518) 463-8527
(716) 232-1438**

March 14, 2001

REVISED

**A. Vincent Buzard, Chair
Special Committee on Cameras in the Courtroom
New York State Bar Association
One Elk Street
New York, NY 12207**

Dear Mr. Buzard:

On behalf of the Board of Directors of the New York County Lawyers' Association, we applaud the outstanding efforts of you and the Special Committee on Cameras in the Courtroom on this important topic. NYCLA's Board has considered the Special Committee's Report and adopted the following position at its meeting on March 12, 2001:

NYCLA endorses the adoption of permanent legislation to permit courts to consider and grant an application for audio-visual coverage of court proceedings. NYCLA also endorses the recommendations included in the Report, with the following exceptions and provisos:

- **There shall be no audio-visual coverage of Family Court proceedings;**
- **There shall be no audio-visual coverage of any criminal court proceeding (in any court exercising criminal jurisdiction, including but not limited to New York State Supreme Court, County Courts, New York City Criminal Court and local courts), without the express consent of the prosecution and the defense;**
- **In a trial of certain offenses, the consent of the victim shall also be required for audio-visual coverage, or, if the victim is deceased, or under the age of eighteen, or so mentally impaired as to be unable to give informed consent to such coverage, a family member of such victim, or the legal guardian or representative of the legal guardian shall be authorized to give such consent. At this time, NYCLA's Board has not determined specifically to which offenses this provision should apply.**
- **In all other matters, any appeal of a determination granting or prohibiting an application for audio-visual coverage shall be to the appropriate Appellate Division.**

**NYCLA's Position on
Cameras in the Courtroom
Page 2; 3/14/01**

**We respectfully request that NYCLA's views be circulated to the House of
Delegates.**

Sincerely,


**Craig A. Lundy
President**

CAL/rz



**COUNTY OF BROOME
SURROGATE'S COURT CHAMBERS
BINGHAMTON, NEW YORK
13901**

**EUGENE E. PECKHAM
SURROGATE JUDGE**

February 8, 2001

**A. Vincent Buzard, Esq.
Chair of Special Committee on Cameras in the Court Room
New York State Bar Association
One Elk Street
Albany, NY 12207**

Dear Vince:

In reviewing the report of your committee, it occurs to me that you have not considered separately the possibility of cameras in Surrogate's Court matters. I would suggest that your committee consider whether cameras ought not to be banned in all Surrogate's Court matters just as you have recommended that they not be permitted in the Family Court.

Surrogate's Court matters almost inevitably involve intra-family disputes that can only be exacerbated by cameras in the same way as Family Court matters. Particularly sensitive are guardianship hearings pursuant to Article 17 and 17A of the Surrogate's Court Procedure Act and Article 81 of the Mental Hygiene Law. In the Article 17 and 17A guardianships you are dealing with children or mentally retarded or developmentally disabled persons. In Article 81 proceedings you are dealing with adults, but the respondents are persons who are alleged to be suffering from a mental disease or defect or some other disabling illness necessitating the appointment of a guardian. Exposing the children and other disabled persons involved to the potential publicity that might result from cameras in the court room could have the same devastating effect on the children and disabled that you recognize in your report in regard to victims of sexual assault, domestic violence, and bitter divorce and custody disputes.

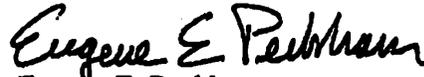
Other typical Surrogate's Court matters can involve contests over the probate of a Will, administration of an estate, or the final accounting by an executor or administrator. Again, these matters typically involve disputes between family members and can create bad feelings between those family members. Exposing them to the publicity inherent in cameras in the court room and possible presentation on the evening news, will most likely result in making the bad feelings stronger and more difficult to resolve. Reconciliation by the family after the dispute has been concluded would be more difficult if the family's dirty linen has been subject to the publicity resulting from cameras in the court room in all these types of matters.

As your report says, "a more restrictive access standard for cameras is justified by the

nature of the access sought and heightened privacy interest in family...matters. Audio/visual coverage is particularly intrusive and intimidating." I would suggest that this is equally as much true in the Surrogate's Court as it is in the Family Court.

Accordingly, I would recommend that your committee consider amending its report to provide that cameras would not be permitted in all Surrogate's Court matters. Thank you very much for your consideration.

Sincerely yours,


Eugene E. Peckham
Surrogate Judge

Supreme Court
of the
State of New York



JAMES A. YATES
JUDGE

JUSTICES' CHAMBERS
100 CENTRE STREET
NEW YORK, NEW YORK 10013

Personal and Unofficial

February 8, 2001

A. Vincent Buzard
Chair of the Special Committee
Bar Center
New York State Bar Association
One Elk St.
Albany, NY 12207

Re: Report on Cameras in the Courtroom

Dear Mr. Buzard,

As a Member of the House of Delegates and as a trial judge with almost nine years experience presiding over felony trials in New York County Supreme Court, I would like to comment on one aspect of your recent report. I disagree with the recommendation that "Appeals" (of the decision to permit or deny camera coverage) be made to an Administrative Judge on a *de novo* basis.

In the first place, Administrative Judges are not appellate courts. They are neither elected nor merit-selected to act as such. There is no requirement that an administrator have any trial experience nor a particular reputation for scholarship. It is inappropriate, as a matter of state law and policy, to have an administrator, in place of the Appellate Division, "correct" decisions made by a trial judge. The Office of Court Administration was not created to "supervise" decisions made during the course of a trial. It is particularly demeaning to suggest, as your report does, that an administrator, not the Appellate Division, should decide "whether the judge has given appropriate care to the various factors involved in [deciding the motion]." I can understand an appeal process. I can understand an Article 78 proceeding. I cannot understand administrative review of a judicial act.

I recognize that an administrative process was a facet of the prior experiment with cameras. But even then, the review was for "abuse of discretion" not *de novo* review. As such, administrative "overrulings" were rare. It seems especially inappropriate to have an administrative designee, facing media pressure, bypass the record and the reasoning of the trial judge in order to impose his or her *de novo* determination upon the presiding judge who must

then live with the results at trial and its appellate consequences.

I'm told that this proposal was thought, by some, to provide some measure of protection against judges who might, all too easily, welcome broadcasts. I couldn't disagree more. A trial judge, in an important and closely watched case, is in the best position to guard against prejudice and is more likely to understand the need to insulate a proceeding from error likely to lead to problems on appeal. On the other hand, OCA has lobbied for years to open the courts to cameras. Without taking any position one way or the other on the merits of televised proceedings, I can't understand why proponents of the change felt that OCA administrators were more likely than trial judges to shut a courtroom to protect the parties. History would not tend to justify the conclusion. However, if the motivation for the proposal is a desire to have administrators protect the rights of clients facing "media hungry" judges, then the Bar should recommend legislation more likely to achieve that result.

Sincerely,

James A. Yates, J.S.C.

A handwritten signature in black ink, appearing to be "James A. Yates, J.S.C.", written over the typed name.

cc: Alan Rothstein
Counsel
Association of the Bar of the City of NY

Women's Bar

OF THE STATE



Association

OF NEW YORK

FOR IMMEDIATE RELEASE

FROM: WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK
P.O. Box 936, Planetarium Station, New York, NY 10024-0546
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***CAMERAS IN THE COURTROOM
THE WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK SAYS
ROLL 'EM - WITH RESTRICTIONS***

(New York, NY) – March 12, 2001 – (New York, NY) Deborah Kaplan, President of the Women's Bar Association of the State of New York ("WBASNY"), recently announced that WBASNY now supports permitting cameras back into New York courtrooms *except* in cases involving domestic violence, sex offenses and matrimonial issues. WBASNY leadership emphasize that only with these important protections in place are cameras in the courtroom appropriate.

"So much of what passes for televised court proceedings – the 'made for TV' shows of celebrity judges – bears little resemblance to real courtroom events." Kaplan asserts, "Coverage of actual typical proceedings will give the general public a sounder, more comprehensive view of the legal process and will also increase the public's trust and confidence in the legal system."

"WBASNY is not aware of any empirical evidence to suggest that jurors in a televised proceeding react differently than those in an untelevised setting. There is nothing to indicate that the delivery of justice is impaired by audiovisual procedures in any way."

"With audiovisual coverage of courtroom proceedings widespread, permissible in 48 out of 50 states, New York's prohibition stands in stark contrast to the rest of the nation."

"As a result of authorizing legislation, from 1987 until June 30, 1997, civil and criminal trials in New York were televised on an experimental basis. Despite numerous studies concluding that audiovisual coverage should continue, legislation extending such coverage is lacking."

