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Report & Recommendations on Audio-Visual Coverage of Court Proceedings¹

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New York County Lawyers' Association on February 14, 1994*

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Background

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For many years audio-visual coverage of judicial proceedings in New York was strictly prohibited. The origin of the prohibition against filming, broadcasting and photographing court proceedings stemmed from the Hauptmann-Lindbergh kidnapping trial in 1937. Prior to 1937, newsreel and still cameras were permitted in American courtrooms at the discretion of the presiding judges. The Leopold-Loeb murder trial in 1924 and the Scopes Evolution "monkey" trial in 1925

¹ The Special Committee on Cameras in the Courts wishes to express its appreciation for the superb job done by Alison Alifano, NYCLA's Chief Librarian, in compiling the source materials reviewed by the Committee.

were the most notable of those. The Scopes trial was even broadcast live on the radio. However, in the wake of the perceived and actual excesses of the press in the sensational Lindbergh trial, the American Bar Association added a ban on photographing and broadcasting court proceedings in the Canons on Judicial Ethics.² Although the ABA's canon was only a model, the entire federal judiciary and all state judiciaries, except those of Colorado and Texas, adopted the ban in their own courts.

In 1952 the ABA amended Canon 35, adding the prohibition on televising court proceedings as well. In accordance with the action of the ABA, in 1952 the New York state legislature adopted §52 of the Civil Rights Law. That statute prohibited the filming, broadcasting and photographing of all judicial proceedings with the exception of appeals where there were no witnesses present. The original 1937 prohibition and the 1952 adoption of Civil Rights Law §52 were the result of tremendous disturbances caused by the equipment of those eras. The cameras required flash bulbs or extremely large, powerful and hot lights. The newsreel cameras were also very large and noisy, as were the early television cameras of the 1950's. As noted above, Texas was one of

² American Bar Association, Canons on Judicial Ethics, Canon 35.

only two states that permitted audio-visual coverage of judicial proceedings in 1962. The trial of Texas financier Billy Sol Estes was broadcasted and the two days of pretrial hearing were "an electronic circus." Television crews roamed at will, massive cables cluttered aisles, huge artificial lights glared on everyone and approximately a dozen bulky television cameras were trained on the participants. After his conviction, Mr. Estes appealed, claiming that he did not receive a fair trial due to "the media circus." The United States Supreme Court overturned his conviction by a 5 to 4 vote. The Court overturned Estes' conviction because of "the totality of circumstances," not due to television coverage alone, but television coverage in combination with intense publicity and the failure of the trial judge to maintain order in the courtroom.³

In 1981, the United States Supreme Court again visited the issue of cameras in the courts. In *Chandler v. Florida*, the Court held that televising a criminal trial does not, *per se*, violate a defendant's right to due process.⁴ The proponents of audio-visual coverage of judicial proceedings in New York acted quickly, and in 1982 a bill was

³ *Estes v. Texas*, 381 U.S. 532, 85 S. Ct. 1628, 14 L. Ed.2d 543 (1965).

⁴ *Chandler v. Florida*, 449 U.S. 560, 101 S. Ct. 802, 66 L. Ed.2d 740 (1981).

introduced that would have permitted such coverage of trial proceedings on an experimental basis. The Assembly approved the bill, but it was defeated in the Senate (S. 10509).

New York Embarks Upon an Experiment

With the passage of § 218 of the Judiciary Law on June 15, 1987 (effective December 1, 1987), New York embarked upon an experimental program permitting audio-visual coverage of civil and criminal proceedings.⁵ One of the legislature's stated reasons for adopting the statute was its recognition that "an enhanced public understanding of the judicial system is important in maintaining a high level of public confidence in the judiciary." The legislature took note that public awareness and understanding of judicial proceedings is often limited to a person's role as juror or witness and that "[T]he vast majority of citizens, therefore, rely on reports in the news media for information about the judicial system and accounts of judicial proceedings."

It had been the experience of an earlier generation that the bright lights, large cameras and other noisy equipment intruded upon the

⁵ L.1987, Ch.113

dignity and decorum of the courtroom and tended to create an atmosphere unsuited to calm deliberation and impartial decision making. However, the legislature acknowledged that significant improvements in the technology of photography and of audio and video broadcasting had been achieved. In addition, the legislature studied the experience in other jurisdictions and developed procedural safeguards similar to those in other states, most notably Nevada, Connecticut, Washington, Rhode Island, Florida, Arizona, Wisconsin, and California.⁶ Thus, it was deemed feasible to permit audio-visual coverage of New York court proceedings without disruptive effect. The legislative findings stated that "[E]xperience in forty-three states suggests that such audio-visual coverage of judicial proceedings may take place, under continuing judicial scrutiny and supervision, without jeopardizing the judicial system."⁷

⁶ See, New York State Senate Judiciary Committee. *Cameras in the Courtroom: A Proposal for a New York State Experiment (March 1986)* pp. 5-7.

⁷ Presently, 47 states permit cameras in courtrooms in some form. The following is a summary of state rules (N.B.: Some states fall into more than one category):

States with Permanent Rules	
Approved for Trial and Appellate Courts	33
Approved for Trial Courts Only	1
Approved for Appellate Courts Only	7
States with Experimental Rules	
Approved for Trial and Appellate Courts	2

The experimental program contained a "sunset" provision: it was scheduled to terminate on May 31, 1989. Recognizing that the program deserved further consideration, on May 31, 1989 the legislature extended it for two additional years.⁸ On June 19, 1992, the program **was** again extended through January 31, 1995.⁹

Provisions of the New York Statute

The New York statute was carefully crafted to protect the rights of the individual while affording the public its right to know. As in almost all states permitting cameras in the courts, consent is required of the presiding judge who has discretion to control the coverage during the proceedings. Advance written application by the media is contemplated. Coverage is restricted in cases involving victims of sex crimes. Voir dire coverage is prohibited. Coverage of jurors is prohibited, to prevent their visual identification. Nonparty witnesses in criminal trials have the right to demand that their

Approved for Trial Courts Only	5
Approved for Appellate Courts Only	2
Total States Allowing Cameras in Courtrooms	47
States Where Cameras Are Not Permitted and No Rules Pending	3

⁸L. 1989, Ch. 115

⁹ After a one year hiatus during which legislative consensus could not be achieved, this program was reinstated by L.1992, Ch.187, codified as Judiciary Law § 218 as amended by L.1992, Ch.274 and L.1993, Ch. 348.

images be visually obscured during such witnesses' testimony. Other prohibitions include coverage of conferences in the courthouse and coverage of undercover law enforcement officers who testify.

Upon a request for audio-visual coverage of court proceedings the trial judge is directed "at a minimum" to take into consideration (i) the type of case; (ii) whether such coverage would harm any participant in the case or otherwise interfere with the fair administration of **justice**, a fair trial or the rights of the parties; (iii) whether any order excluding witnesses from the courtroom prior to their testimony could be rendered substantially ineffective by allowing audio-visual coverage; (iv) whether such coverage would interfere with any law enforcement activity; or (v) whether lewd or scandalous matters are involved in the case.¹⁰ A pretrial conference is mandated by the enabling statute at which the trial judge is directed to review, with counsel and the news media, who will participate in the audio-visual any restrictions to be imposed. Coverage of arraignments and suppression hearings are only permitted with the consent of all parties to the proceeding. There are strict specifications for equipment, personnel, sound and light.

Pursuant to the purposes of the experiment, the statute directs the

¹⁰ *See*, Judiciary Law §218(3)(c).

creation of a twelve-person committee to review audio-visual coverage. Three members are appointed by the governor, three by the chief administrator, two by the majority **leader** of the senate, two by the speaker of the assembly, and one member each is appointed by the minority leaders of the senate and assembly. The committee is directed to evaluate, analyze and monitor the provisions of the statute and their impact on court proceedings and to submit a report to the legislature, governor, and the chief judge as to the efficacy of the program and whether it should be continued.

Research of the Special Committee

In considering the approaching expiration date of the present experiment and what recommendations, if any, we would make, the Special Committee on Cameras in the Courts consulted the Chairs or past Chairs of all Court Committees and Sections of the Association and other members of NYCLA. We spoke with representatives of the Office of Court Administration and concerned members of the bar. Additionally, we reviewed and analyzed more than 2,000 pages of reports, transcripts of testimony and other documents concerning audio-visual coverage of judicial proceedings.¹¹

¹¹ See, attached bibliographical **list** of sources.

While it appears that **the** majority of those in the legal community and "good government" groups supports audio-visual coverage of judicial **proceeding, criminal defense counsel have consistently been critical of cameras in the courts. They have argued, *inter alia*, that audio-visual coverage of judicial proceedings often causes defendants to be prejudiced in the eyes of the public, that audio-visual coverage of trials encourages** sensationalization of judicial proceedings, causes a breakdown of **decorum** in **the** courts and harms **the** process, and that the presence of these media causes attorneys, **witnesses** and judges to "play to the cameras." They argue that this impacts upon the criminal defendant's due process rights. It is important to note that many of the attorneys that have tried cases that were broadcasted have reported that **after** a very short time everyone forgets that there are cameras in **the** courtroom.

Recommendations

We have carefully considered the criticisms posed by the criminal defense bar and others and believe that there is no persuasive evidence that the judicial process or the due process rights of parties are harmed by §218 of the New York's Judiciary Law. Furthermore, it seems to us that of the three branches of government, the public knows the least about the judiciary

and **its** processes. The public is bound to become better educated as to what goes on in court and the dynamics of the **judicial** process if cameras are permanently permitted in the **courts. When compared to the way the public learns of cases in the print media,** it seems certain that the public gets a more complete view of the judicial process when there is audio-visual coverage of trials, as opposed to mere articles in newspapers or reports by television news correspondents on the courthouse steps.¹² Additionally, there are valuable educational uses of audio-visual coverage of judicial proceedings. Students and attorneys have the opportunity to see **the** process in action, *e.g.*, to view opening statements, cross-examination, judicial behavior, jury charges, evidentiary rulings, etc. Audio-visual coverage of judicial proceedings can also be a helpful in the training of judges.

The experiment in New York has been a success. In six years, there has not been one case overturned due to problems arising from audio-visual coverage. It is respectfully recommended that Judiciary Law §218 be adopted permanently

¹² The criticism of electronic coverage as "infotainment," i.e., soundbites on the evening news and the preference of some for full coverage ignores the fact that the print media is not complete **in** its coverage **either. What reaches** the reader's attention is but a summary filtered through the perhaps slanted viewpoint of the reporter.

President
Robert L Harg

RESOLUTION

President-Elect
Casimir C. Patrick, II

February 14, 1994

Vice President
Klous Eppler

Secretary
M. Robert Goldstein

WHEREAS, the Special Committee on Cameras in the Courts of the New York County Lawyers' Association issued a *Report & Recommendations on Audio Visual Coverage of Court Proceedings* on February 10, 1994; and

Treasurer
Frank R. Rosiny

Executive Director
Irwin S. Davison

Deputy Executive Director
Helen A. Duguay

WHEREAS, the Report reviews the history of audio-visual coverage of judicial proceedings; and

Assistant Executive Director
Sophia J Gianacoplos

WHEREAS, the Special Committee on Cameras in the Courts has studied § 218 of the Judiciary Law, under which audio-visual coverage of judicial proceedings has been permitted in New York on an experimental basis since 1987; and

Chief Librarian
Alison Alifano

WHEREAS, the Special Committee has studied the results of the current experiment, has consulted with the Chairs or Past Chairs of all Court Committees and Sections of the Association, has consulted with members of the Office of Court Administration and concerned members of the bar, and has reviewed and analyzed more than 2,000 pages of reports, transcripts of testimony and other relevant documents concerning audio-visual coverage of judicial proceedings; and

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of the New York County Lawyers' Association hereby adopts the Report; and

IT IS FURTHER RESOLVED that the New York County Lawyers' Association recommends that (1) the experiment be deemed a success, and (2) § 218 of the Judiciary Law be adopted permanently.

Bibliographical List of Sources

Primary Sources:

Legislation:

L.1987, Ch. 113

L.1989, Ch. 115

L.1992, Ch. 187

Interim Report to the Chief Judge of the New York State Court of Appeals by the Media Advisory Committee, May 30, 1980.

Memo from New York State Assemblyman Saul Weprin to Sponsors of Television in the Courts Bill, January 27, 1986.

New York State Senate Judiciary Committee. Cameras in the Courtroom: A Proposal for a New York State Experiment (March 1986). (John R. Dunne, Chairman)

State of New York. Unified Court System. Office of Court Administration. Proposed Rules on Cameras in the Courts (October 6, 1987).

New York State Legislature. New York State Senate Judiciary Committee. New York State Assembly Judiciary Committee. Joint Hearing re Continuing to Allow Cameras in the Trial Courtrooms of New York State, held at the Association of the Bar of the City of New York (March 2, 1989). (Sen. John R. Dunne and Assemblyman G. Oliver Koppell, co-chairs)

State of New York. Unified Court System. Office of Court Administration. Report of the Chief Administrative Judge to the New York State Legislature the Governor and the Chief Judge on the Effect of Audio-visual Coverage on the Conduct of Judicial Proceedings (March 1989).

State of New York. Unified Court System. Office of Court Administration. New Audio-visual Coverage Bill (June 1, 1989).

State of New York. Unified Court System. The State of the Judiciary. 1989, p. 59.

The Stenographic Record. Before the New York State Senate Judiciary Committee and the New York State Assembly Judiciary Committee: In the Matter of a Public Hearing to Consider the Issue of Continuing to Allow Cameras in the Trial Courtrooms of New York State. Proceedings (March 13, 1989).

New York State Assembly. Committee on Judiciary. 1990 Annual Report, p. 16.

New York State Assembly. Committee on Judiciary. 1991 Annual Report, p. 19.

State of New York. Unified Court System. Office of Court Administration. Report of the Chief Administrative Judge to the New York State Legislature the Governor and the Chief Judge on the Effect of Audio-visual Coverage on the Conduct of Judicial Proceedings (March 1991).

New York State Assembly. Committee on Judiciary. 1991 Annual Report, p. 19.

Secondary Sources:

National Association of Bar Executives. Audio-visual survey (1978).

Carter, Charlotte A. Media in the Courts. National Center for State Courts,

1981

Association of the Bar of the City of New York. Committee on Communications Law. Committee on State Legislation. Report on Legislation. S.5300-B/A.7360-B (1983).

"Cameras in the Courtroom: Free Press v. Fair Trial," CSG Backgrounder. The Council of State Governments, State Information Center, March 1984.

Federal Bar Council. Report of the Committee on Second Circuit Courts of the Federal Bar Council on Audiotape Methods for United States District Court Reporting. (November 1, 1984).

New York State Senate Judiciary Committee. Cameras in the Courtroom: A Proposal for a New York State Experiment (March/April 1986). (John R. Dunne, chair).

National Center for State Courts. Summary of TV Cameras in the State Courts (June 17, 1987).

"Reasonable rules for cameras in court," White Plains Reporter Dispatch. October 13, 1987, p.10, col. 1.

"Rules proposed for camera use in courtrooms," New York Law Journal. October 8, 1987, p. 1, col. 2.

National Center for State Courts. TV in the Courts, Evaluation of Experiments, February 3, 1988.

Borgida, Eugene, Kenneth G. DeBono and Lee A. Buckman, "Cameras in the Courtroom: The effects of media coverage on witness testimony and juror perceptions" (October 15, 1989).

National Center for State Courts. Summary of TV Cameras in the State Courts (November 22, 1989).

New York State Defenders Association. The Intrusion of Cameras in New York's Criminal Courts: A Report by the Public Defender Backup Center (May 12, 1989).

National Center for State Courts. Summary of TV Cameras in the State Courts (August 13, 1993).

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