

COURT OF APPEALS OF THE STATE OF NEW YORK

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COURTROOM TELEVISION NETWORK, LLC,

*Plaintiff-Appellant,*

-against-

THE STATE OF NEW YORK, GEORGE E. PATAKI,  
in his official capacity as Governor of the State of New York,  
ELIOT SPITZER, in his official capacity as Attorney General  
of the State of New York, and ROBERT MORGENTHAU,  
in his official capacity as District Attorney of New York County,

*Defendants-Respondents.*

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**Brief of the  
New York State Defenders Association**

*Amicus Curiae*

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**Interest of Amicus Curiae**

Since the experiments involving the presence of cameras in court began in 1987, the New York State Defenders Association Public Defense Backup Center [NYSDA] has been actively involved in tracking cases and gathering data regarding the true impact of the use of television cameras in courtrooms. NYSDA published *The Intrusion of Cameras In New York Criminal Courts: A Report of the Public Defense Backup Center* in 1989 [hereinafter *Intrusion of Cameras*], an analysis of the information gathered after the first eighteen month experiment permitting cameras in court.

Based on data submitted to the Office of Court Administration in connection with the evaluation of the experimental legislation, 94% of media applications were to cover criminal proceedings, which often involved homicide or other serious crime. This statistic informs NYSDA's resolute interest in the issue.

NYSDA's mission in protecting due process is intricately bound up with the issue of restricting the use of television cameras to cover courtroom proceedings. Every court proceeding, not just a majority of court appearances, in a criminal matter must be conducted to ensure that any person accused of a crime, any victim required to give evidence, any witness with knowledge of an alleged criminal incident, any juror who is to give objective consideration to evidence, any judge who must preside impartially over criminal proceedings, is permitted to do so in an atmosphere free from prejudice or fear by external influences.

The research NYSDA has conducted and collected over the years in this regard will be useful to this Court in determining whether there is a legitimate State interest in prohibiting cameras in courtroom proceedings.

Plaintiff advocates that the presence of television cameras in courtrooms has no appreciable negative impact on judicial proceedings, and therefore, a statute that prohibits television coverage or the presence of any cameras in courtrooms is an unconstitutional violation of freedom of the press and/or access by the public. Plaintiff seeks to reverse long-standing law and policy prohibiting electronic media coverage of courtroom and other proceedings by creating new and greater rights of access to the courts heretofore not accorded by any interpretation of either the U.S. Constitution or the Constitution of the State of New York.

*Amicus* herein presents information and research demonstrating that there is considerable evidence identifying and measuring the negative impact of television cameras on the judicial process, sustaining the constitutionality of a statute that prohibits the presence of cameras in New York courts.

## **Civil Rights Law § 52 Prohibiting Television Cameras In Court Proceedings Is Constitutionally Supported By The Demands Of Due Process And The Fair And Independent Administration Of Justice**

### A. Introduction

The United States Supreme Court ruled in 1965 that television cameras must be barred from courtrooms. *Estes v Texas*, 381 U.S. 532 (1965). This result was reached in part because the equipment was so cumbersome and annoying that it disrupted the judicial process, distracted the parties and jury from concentrating on the issues, and gave the proceedings a circus-like atmosphere. The primacy of bulky technology aside, there was also lengthy discussion regarding the danger of televising trials that was directed toward the susceptibility or proclivity of the television industry itself to inject unwarranted burdens on the system. The Court recognized the inherent competing interests between the press and the judicial function as well as the prejudicial impact the presence of television cameras would inevitably have on parties, witnesses, court personnel, judges, jurors and ultimately on the public at large.

Since the *Estes* decision, there has been much discussion about the access of the media to court proceedings and the right of the media to bring cameras into a courtroom. The popular legal argument for permitting cameras based on the advances in the physical technology is taken from Justice Harlan's concurring opinion in *Estes v Texas* wherein he said:

Finally we should not be deterred from making the constitutional judgment which this case demands by the prospect that the day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may

disparage the judicial process. If and when that day arrives the constitutional judgment called for now would of course be subject to re-examination with the traditional workings of the Due Process Clause. *Estes v Texas*, 381 U.S. 532 (1965) Harlan, J concurring, at 595.

Based on this, the Plaintiff would limit the issues to no more than the physical state of the technology. But the inquiry must be directed toward the more crucial and larger questions arising from the potential disparagement of judicial proceedings by the presence of the commercial television industry in courtrooms and the resulting impact on due process and the integrity of the judicial system. The question does not merely revolve around the physical presence of the broadcasting apparatus, it lies in what the presence of the broadcasting equipment means: that the witnesses statements and victims testimony will be broadcast later on local, national or international television and/or the World Wide Web. The presence of television recording equipment further signals that the particular matter under judicial consideration is, or is thought to be, more momentous than other cases that the television industry does not select for coverage. The subtle effects of being the subject of television coverage carry a significant risk of altering participants' perceptions and responses.

The Supreme Court pitted the exploitation of a criminal case by the press against the deprivation of the right to a fair trial and due process of law in *Sheppard v Maxwell*, 384 U.S. 333 (1966). While not faced directly with the issue of television cameras in the courtroom, the Court weighed the first amendment freedom of the press against the Fifth and Sixth Amendments to a fair trial and due process of law. The Court ruled that the trial court had an obligation to impose restrictions on

the press as related to coverage of a case in such a manner as to protect the individual's right to a fair trial. Thus, the Court made it clear that despite the rights afforded the press and public of access to governmental proceedings, these rights must yield to the more vital concerns of the constitutional rights of the individual to due process and a fair trial.

The Supreme Court broke from *Estes*' presumption of prejudice arising when the electronic media is granted permission to film and televise trials in *Chandler v Florida*, 449 U.S. 560 (1981). *Chandler* ruled that Florida could not be barred from passing experimental legislation, citing the various passages in *Estes* that indicated that the ruling in that case would be subject to re-examination when the state of the technology had sufficiently developed.

*Chandler* did not grant the television industry a constitutional right to access with electronic recording equipment. The Court simply stated that the evolving state of the technology warranted a re-examination of the issues by the states to determine whether the mode of media access could survive the demands of due process. *See Westmoreland v. CBS*, 752 F.2d 16, 21 (2d Cir. 1984) *citing Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 610 (1978)) [Although *Chandler* held that *Estes* does not stand as a ban on state experimentation with developing television technology, it nevertheless did not endow the media with substantive rights qua media].

While concurring in the *Chandler* outcome permitting states to conduct their own examination of the issues, Justice Stewart manifestly reaffirmed the potential

disparagement of the fair administration of justice when television cameras come into court despite technological progress in the hardware, saying:

It can be accurately asserted that television technology has advanced in the past 15 years, and that Americans are now much more familiar with that medium of communication. *It does not follow, however, that the “subtle capacities for serious mischief” are today diminished, or that the “imponderables of the trial arena” are now less elusive.* (Emphasis supplied) *Chandler v. Florida*, Stewart J. Concurring Opinion, 449 U.S. at 586.

Florida and other states have since studied and passed legislation permitting cameras in court. Beginning in 1987, the New York Legislature undertook a decade of experimentation to determine whether to maintain its then 35-year policy of no television coverage under Civil Rights Law § 52. Four periods of experimentation were conducted, each followed by hearings, study and report.

Each review committee after every round of the four experimental periods recommended passage of a permanent statute permitting cameras. The New York State Legislature was not persuaded by the committees' recommendations and preserved the policy of prohibiting television coverage of trial and other proceedings under Civil Rights § 52. There is no constitutional violation of press or public rights in this result.

Validation for this policy is well documented in various reports, especially those Minority Reports submitted by Jack Litman of the Committee on Audio-Visual Coverage of Court Proceedings chaired by the Honorable Burton Roberts [Roberts Committee] in 1994 [hereinafter Litman Report] and by Leonard Noisette of the New York State Committee to Review Audio-Visual Coverage of Court Proceedings chaired by John D. Feerick [Feerick Committee] in 1997 [hereinafter Noisette

Report]. These reports establish that the potential risk to the fair administration of justice is manifest when television cameras are permitted in courtrooms. That a person may be deprived of due process and fundamental fairness within the justice system as a result of television cameras' *subtle capacities for serious mischief* is sound policy supporting prohibition. This concern was most recently sustained as a basis to uphold § 52 in *Heckstall v. McGrath*, 96480, Third Dept. decided February 24, 2005, 2005 N.Y. App. Div. Lexis 1890, *citing* the Noisette Report.

Few issues ever get the vast amount of attention the issue of cameras in courts has received in the New York State Legislature over the years, with its experimental legislation, committee reviews, hearings and reports. Bills in support of permitting cameras in courtrooms have been regularly submitted to the New York Legislature and regularly rejected. Nevertheless, aside from two amendments -- neither of which are at issue here -- Civil Rights Law § 52 has remained in essentially the same form until today. *See* N.Y. Laws 1962, c. 706, § 1 [amendment to allow televising, broadcasting or filming during certain legislative proceedings specifically defined]; N.Y. Laws 1976, c. 352, § 1 [amendment to allow broadcast coverage of hearings conducted by the public service commission]. Since the Legislature has consistently declined to change or repeal the statute, and because the passage of time has ameliorated none of the Legislature's concerns, this Court is bound to sustain the presumption of constitutionality of this more than half-century old statute. *See People v. Walker*, 81 N.Y.2d 661 668(1993); *also People Davis*, 43 N.Y.2d 17, 30 (1977).

To prevail in this action, the Plaintiff must establish that no set of circumstances exists under which § 52 would be valid. *United States v. Salerno*, 481 U.S. 739, 745 (1987). When applying the test, courts must “defer to the Legislature which is presumed to know all the facts that would support a statute’s constitutionality. . . . The Legislature’s actual purpose need not be apparent, for a statute is constitutional if rationally related to any conceivable legitimate state interest.” *Walker, supra*, 81 N.Y.2d at 668. “Simply stated, the invalidity of the law must be demonstrated beyond a reasonable doubt.” *People v. Tichenor*, 89 N.Y.2d 769, 773 (1997).

While Plaintiffs rely upon a collection of studies and evaluations on the effect of television cameras in courts in support of their argument that § 52 is invalid, in fact, as discussed in detail in Part D below, none of these studies have been the subject of methodologically sound research. There has yet to be any empirical research measuring the true impact of the presence of television cameras on courtroom participants. What data is available fails to overcome the constitutionality of Civil Rights Law § 52 while lending considerable indication that it is well grounded in the public policy goals of protecting due process and the integrity of the judicial system.

**B. Commercialized Televised Coverage of the Criminal Justice System Reduces the Public’s Faith in the Justice System**

The Legislature has consistently worked to preserve the independence and integrity of our court system. The potential compromises to a fair trial and due process created by cameras televising trials have been well documented. The available empirical evidence indicates that the public is losing confidence in our

courts as a direct result of televising trials and marketing them as sensationalized commercial entertainment.

In a 1996 Marist Institute poll of 616 registered voters in New York conducted in regard to television broadcast coverage of trials, 61% of the voters surveyed responded that television cameras in a courtroom serve more to sensationalize a trial than increase the accuracy of the news coverage; 52% responded that they think cameras have had a negative effect on New York's justice system, with only 20% responding that it may have had a positive effect.

The Feerick Committee surveyed 351 judges in connection with its inquiry during the final experimental period of cameras in courts. The surveys revealed that the vast majority (80%) of the responding judges were concerned about the commercial exploitation of judicial proceedings by the television industry and 52% of the judges disagreed with the statement: "Television coverage has enhanced public understanding of New York's judicial system." Of the 351 judges surveyed by the Feerick Committee, 80% of the judges said that television coverage is likely to serve more as a source of entertainment than education for the viewing public, and 87% agreed that television coverage transforms high profile cases into mass-marketed commercial products.

In 2001, Professors Richard L. Fox of Union College, and Robert W. Van Sickel 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 Sickel, R.W. (2001 Lynner Rienner Publishers)

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 vs 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: An Analysis of Media Coverage of People v. Boss*; American Society of Criminology Conference, November 2000.

Fox and Van Sichel observe 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 particularly problematic when this style of coverage is used to present images of the judicial process.

In the end, Fox and Van Sichel 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.

Although in theory it seems 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. Under the circumstances, Plaintiffs' argument that cameras are a positive force in the administration of justice by subjecting the courts to greater scrutiny and allowing the public greater access is unsubstantiated.

C. Existing Research Fails to Overcome the Validity of § 52 and Demonstrates that the Presence of Television Cameras in Courtrooms Creates a Clear Potential to Distort Judicial Proceedings.

A primary concern of the Legislature underlying § 52 was that the psychological effects that broadcast media would have on witnesses would undermine the accuracy and even the presentation of their testimony, as well as the integrity of the truth-finding process itself. In enacting the statute, the Legislature relied in part on a report of the New York State Bar Association prepared with regard to proposed federal legislation barring television and radio broadcast coverage of Congressional hearings. *See* N.Y. Bar Committee on the Bill of Rights, *Report on Radio and Television Broadcasting of Hearings of Congressional Investigating Committees* (Dec. 1951) *contained in* bill jacket L. 1952, c. 241 [hereinafter Report on Radio and Television]

The Report on Radio and Television showed that the effects would distort the trial process in a way as to deprive defendants of their right to a fair trial. The conclusion:

[W]e are persuaded that radio, television, newsreels and flashlight photographs, in their varying ways and to varying extents, all tend to transform what should be a serious quest for information into a dramatic production, a public spectacle. We think this is unseemly. We believe that it violates the human rights, if not the legal, of the witness who is the unwilling butt of the proceeding.” Report on Radio and Television at Majority, 4.

Upon this and other concerns, the New York State Legislature passed Civil Rights Law § 52. While recognizing that cameras intimidate witnesses because of their physical intrusion into the courts, Governor Dewey concurred that it is the knowledge that one is being broadcast which has the most insidious effects:

It is difficult enough for the ordinary witness to overcome the nervousness in the presence of a large room full of people, a court, jury or investigating committee and the press. It is impossible if the

witness is placed in front of glaring lights and *knows he is being seen or heard by millions of people.*” L. 1952, c. 241, Governor’s Mem. at 1 (emphasis added).

In 1987, Governor Cuomo approved legislation authorizing broadcast coverage of court proceedings for an 18-month experimental period as permitted by *Chandler, supra*. L. 1987, c. 113. Thus began the ten-year experiment of cameras in New York courtrooms, codified under former Judiciary Law § 218.

Throughout the life of § 52, the Legislature has expressed a keen concern for the effect that the presence of cameras will have on the other participants in the courtroom, namely jurors, judges and attorneys. Experience teaches that these concerns were well founded. *See generally* Litman Report, Noisette Report, *Intrusion of Cameras*. In particular, in criminal trials, there is concern that prosecutors, defense attorneys, witnesses, the jury and the judge will act differently when under the continual eye of a camera. Jay C. Carlisle, *An Open Courtroom: Should Cameras be Permitted in New York State Courts?* 18 Pace L. Rev. 297, 298 (Spring 1998).

In the years of the experimental legislation, the various committees charged with reviewing the effects of the permitting cameras in court found considerable evidence of a negative impact on proceedings and participants as well as a measurable degree of judicial and public distrust of television cameras in courtrooms and the resulting negative impact on the overall administration of justice.

The 1996 Marist poll showed that of 616 registered voters in New York polled in connection with impact of television cameras in courtrooms, more than

two-thirds of those polled would not want cameras in court if they were the accused or the victim.

The results of the Feerick Committee's survey of judges revealed that 37% of the 351 judges surveyed said that television coverage tended to cause judges to render rulings they might not otherwise issue; and 45% agreed that television coverage poses a potential threat to judicial independence.

Professor William J. Bowers, Principal Research Scientist at Northeastern University College of Criminal Justice, testified at a joint hearing of the Assembly and Senate Judiciary Committees in 1991 regarding his study, *Cameras in the Courtroom Make New Yorkers Reluctant to Testify: Executive Summary of the New York State Survey Conducted March 1-4, 1991*. His research revealed that nearly one-half (48%) of all New Yorkers interviewed stated that they would be less willing to testify in front of a camera. The study showed that those most susceptible to criminal victimization -- namely women, elderly, and people in high crime areas -- would be the most reluctant to come forward if the testimony was recorded.

The impact on victims and their families grew in importance throughout the experimental period, and led to an outpouring of opposition by victims' advocacy groups. These groups, which were instrumental in reinstating the ban on cameras in courts in 1991, protested the use of cameras because they invaded the victim's privacy, revealed their identity and discouraged reporting. According to Pat Bane, Coordinator for Murder Victims' Families for Reconciliation,

Camera coverage in court is unfair to crime victims and their families. It abuses those who come forward, unnecessarily interfering with their privacy rights at a time when they are most vulnerable and in need of state court protection. Victims of crime and witnesses to

criminal events begin by being afraid. That is their starting point. Some fear coming forward. Others, if forced to do so, suffer psychic trauma that no one, certainly not the press, cares about. Statement of Pat Bane to the Joint Hearing of the Senate and Assembly Judiciary Committee (5/13/91).

This response ultimately led to greater restrictions to protect the identity and privacy of victims under § 218. Despite such added protections, victims' advocates strongly opposed any continuation of the experiment, and this led numerous legislators to be responsive to victims' concerns and support the continued ban on cameras. Former Senator John Perry wrote in an Open Letter to his constituents when he withdrew his support for cameras in court:

In my opinion it is the impact of electronic media coverage on criminal defendants, upon crime victims, witnesses and the families of crime victims that weigh most heavily against a continuation of the cameras in the courtroom experiment." Open letter, Perry to constituents of 7/10/91.

In 1997, Dennis Holland, Long Island/ Metro Area New York Chapter Leader of Parents of Murdered Children, urged repeal of the failed cameras experiment, because cameras in the court hurt our system of justice, interfere with the rights of all parties to a fair trial and magnify the pain and suffering of victims and their families. *See* Holland Statement in Opposition to S. 4814/A. 8210.

The pressure of television camera coverage reaches witnesses as well. In the Feerick Committee survey, 40% of the judges said that witnesses were distracted by the presence of the television cameras. In the Marist poll, 54% of the voters would be less willing to testify as a witness if television cameras were present.

The effects of bringing television cameras into courtrooms further spread to the jury and the jury pool. In the 1996 Marist poll, 43% of those polled would be

less willing to serve on a jury if television cameras were present. This demonstrates an untenable impact on the ability to create well-rounded jury panels from which to select fair, impartial juries.

The National Jury Project, a Washington, D.C. based professional trial consulting firm that pioneered the use of social science research to improve jury selection and case presentation in jury trials, submitted a Memorandum to the Feerick Committee on the impact that permitting cameras in courtrooms has on jurors. *See* National Jury Project Memorandum re: *The Impact of Increased Use of Cameras in Courtrooms*, Jan. 23, 1997. The National Jury Project reported that cameras in courtrooms have undermined rather than restored faith in the justice system. According to their research, the effects on jurors are far reaching. Televised trials and the accompanying commentary tend to teach potential jurors that there is evidence that fills out the case that they are not told about. Potential jurors exposed to televised trials are led to believe that the camera's limited view portrays the courtroom fully and realistically, unaffected by the angle of vision and editing of footage. Potential jurors previously exposed to televised trials are unable to distinguish between what they learned from the televised proceedings and what they heard from attendant commentary, thereby undermining their ability to separate what actual evidence may signify from what evidence might imply after the pundits have had their say.

The National Jury Project learned that the presence of cameras in courtrooms injects bias into the justice system by affecting juror's opinions and expectations: the presumption of guilt increases, candor during voir dire decreases, increased desire by

some potential jurors not to serve leads to increased efforts to be excused while other jurors seeking the limelight of a sensationalized trial manipulate their responses to ensure selection for the jury. Standing alone, concern for the well being and independence of jurors validates the legitimacy of a policy and law barring cameras from courtrooms.

After the last round of experiments, even where the technology was at the height of sophistication, the Legislature still resolved that there was not enough evidence to support a permanent change in the rules regarding cameras. This result is clearly supported by convincing evidence that regardless of the visibility or unobtrusiveness of the equipment the presence of television cameras and all that their presence signifies in judicial proceedings runs a discernible risk of negatively impacting due process and fundamental fairness as well as the public's perception of the legal system.

Plaintiff submits that because no criminal cases have been reversed on the basis of prejudice resulting from the presence of television, then there is no prejudice. But the prejudicial impact of the presence of the television broadcasting equipment that may not necessarily amount to reversible error cannot be ignored. As the Third Department stated in *Heckstall v. McGrath*:

It is undisputed that the right to a fair trial is paramount. Unfortunately, the extent to which cameras in the courtroom affect that right – including whether jurors will be unwilling to serve, witnesses reticent to testify, or attorneys prone to grandstanding – is unknown and largely unmeasurable (see Minority Report of the Committee on Audio-Visual Coverage of Court Proceedings, Dec. 1994, at 39-48). A criminal defendant cannot be expected to adequately show on appeal that he or she was prejudiced by such unmeasurable conduct. *Heckstall v McGrath, supra*, 96480, Third Dept. 2/24/2005.

In determining the validity of the statute, it is not enough to suggest that a majority of cases may escape impact. If the potential risks are great enough to have an impact on any aspect of the proceedings, then the risks are great enough to support the legislation. The existing data firmly sustain the New York Legislature's decision to retain the ban of television cameras in courtrooms and other proceedings under Civil Rights Law § 52. Conversely, the research is not sufficiently overriding to meet the Plaintiff's extraordinary burden of proving the invalidity of a statute rooted firmly in rational public policy.

D. No Scientifically Approved Methodological Study has ever been Conducted Relative to the Impact of Television Coverage of Judicial Proceedings.

The effect of television coverage on trials has been identified as one of a number of extra-legal factors that can adversely affect the fundamental fairness of trials. Unlike more traditional systemic influences that have undergone extensive examination, the true effects of television cameras in courtrooms has received little rigorous scholarly attention. The result is an incomplete body of literature that has not yet benefited from systematic scientific study and replication. Upon this dearth of empirical research policy decisions are being made that affect the millions of people who annually make their way through our civil and criminal courts.

From the outset of the periods of experimental legislation in New York, the need for a carefully designed methodology to study the issues was impressed upon the Legislature and the Judiciary. However, despite the claims of Plaintiff that such

studies exist, no rigorous examination of the impact of television cameras on judicial proceedings or the various participants has ever been conducted.

As a result of his testimony at the joint hearing of the Senate and Assembly Judiciary Committee in 1991, Professor Bowers was invited to submit a proposal outlining the proper research methodology to study the effects of cameras in court. Professor Bowers submitted such a proposal in which he identified the inadequacies in the methodology utilized by Office of Court Administration to evaluate the impact of the temporary statute permitting cameras in courtrooms. The primary flaw was that the research relied on the use of self-reported data notoriously subject to bias.

Professor Bowers proposed the combined use of scientifically controlled field experiments and surveys to address five fundamental questions: 1) How do cameras in the courtroom alter the conduct of judicial proceedings? 2) How do cameras in the courtroom alter the outcomes of judicial proceedings? 3) How adequately and accurately does the audio-visual media represent the judicial process? 4) What does the public learn about the judicial process as a result of having audio-visual coverage? 5) How does the presence of audio-visual coverage in the courtroom affect the willingness of the public as witnesses and victims to participate in the judicial process? The study was never conducted because the Legislature allowed the bill to lapse on May 31, 1991. *See* Bowers Mem. To Assembly and Senate Judiciary Committee of 5/17/91; *also* Litman Report.

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Under Department of Health and Human Services (HHS) regulations for the protection of human subjects (45 CFR part 46), no investigation may involve a human being as a subject in research covered by federal HHS policy unless the legally effective informed consent of the subject or the subject's legally authorized representative has been obtained. Thus, in order to conduct an exacting consideration of the impact of cameras in court, every trial participant, including, counsel, parties, witnesses, jurors, and all court personnel must give consent to the study. No such scrupulous research has ever been undertaken on the topic.

In 2000, Professor Bowers submitted a proposal to the National Academy of Sciences to conduct a similar study of the issues surrounding the presence of television cameras in courtrooms. In this proposal, he highlights that while the issues are being continually reviewed for policy determinations, there is yet to be any comprehensive peer reviewed methodology applied to the subject. *See Bowers, W.J, Proposal to the National Academy of Sciences to address the National Dilemma of Cameras in the Courts (2000).*

Specifically, Professor Bowers asserts that what stands as the main body of available information relative to the issues consists of the collective work of the various states that commissioned studies in pursuit of their own legislative determinations of whether to permit cameras in court. Many of these studies stand as little more than a mélange of opinion, metaphor and anecdote that have come to be accepted as fact. Furthermore, these studies have methodological flaws that tend to limit their validity and generalizability. *See Media Coverage of Law, Hans, V.P.; Dee, J.L., American Behavioral Scientist, Nov/Dec 91, Vol. 35, Issue 2, citing Borgida, et al, Cameras in the Courtroom. The Effects of Media Coverage on Witness Testimony and Juror Perception, Law and Human Behavior, Volume 14, Issue 5, 1990; and Slater & Hans, Methodological Issues in the Evaluation of “Experiments” with Cameras in Courts, Communications Quarterly, Volume 39.*

According to Professor Bowers, whatever disagreement may exist over the actual effects of cameras on court proceedings as a policy matter, there is near complete agreement that no conclusive scientific evidence exists upon which a conclusion may be drawn regarding the effect of cameras on trial participants.

Without more conclusive research and findings, the Plaintiff's cannot support their claim that § 52 is constitutionally invalid.

E. Conclusion

As Professor Bowers has said: the legitimacy of the trial process depends in large part on the extent to which it is free from extra-legal factors. Much like a hospital's surgical suite, the best results are obtained when the environment is as sterile as possible. A courtroom is no different.

New York Civil Rights Law § 52 has withstood more than 50 years of scrutiny. The New York Legislature has decided, after four experiments, that safeguarding a fair trial and due process dictates the exclusion of cameras in our courts. The reasons for that conclusion are manifold, and have been discussed at length herein. They include, but are not limited to: (1) deleterious effects on witnesses; (2) perceived harm to victims; (3) effects on jurors; (4) effects on judges and lawyers; (5) unfairness to the defendant; (6) disruption and burdening the courts; (7) undermining public confidence in the judicial system; (8) distortion of public perception regarding the judicial process; and (9) conclusion that maintaining a courtroom broadcasting program is too burdensome and unworkable. Each of these reasons is rational, has not been disproved by any methodologically sound research, and confirms the presumption of the constitutionality of Civil rights Law § 52.

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