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EXPERT OPINION

## Cameras in New York State Courtrooms: A Short Update

On balance, we believe that New York should join the majority of jurisdictions that permit cameras in the courtroom. In our opinion, the factors favoring legislative change are overwhelming.

June 10, 2024 at 10:00 AM

By Y. David Scharf, David B. Saxe and Joseph J. Kamelhar | June 10, 2024 at 10:00 AM



New York remains one of the only U.S. jurisdictions that bans the use of cameras during trials. The recent trials in New York courtrooms involving former President Donald Trump—one civil, one criminal—have accelerated a re-interest in evaluating New York’s long-standing ban on televising court proceedings.

Almost 20 years ago, the New York Court of Appeals upheld New York’s blanket ban. It seems likely, therefore, that change can only be effectuated through the Legislature. But it begs the question whether televising courtroom proceedings is something for which attorneys, judges, and the general public should strive.

### A Brief Background

- Since 1909, the public’s right to *attend* trials in New York has been guaranteed by statute, Judiciary Law §4, which provides: “The sittings of every court within this state shall be public, and every citizen may freely attend the same.”
- In 1952, the New York Legislature enacted Civil Rights Law §52, which banned cameras in the courtroom. Civil Rights Law §52 provides, in pertinent part: “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.”
- It is generally thought that the passage of Civil Rights Law §52 was viewed as part of a “national backlash” engendered by photographic coverage of such notorious cases as the 1935 trial of Bruno Hauptmann in New Jersey, where press coverage substantially disrupted the proceedings.
- On June 16, 2005, the Court of Appeals in *Courtroom Television Network LLC v. State of New York*, 5 N.Y.3d 222, 229 (2005) unanimously ruled that New York’s ban on cameras in courtrooms did not violate the First Amendment or the New York Constitution.
- Specifically, the Court rejected Courtroom Television Network’s argument that the ban violated Article I, §8 of the NY Constitution, which states: “Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.” In doing so, the court held that the “governmental interests of the right of a defendant to have a fair trial and for the trial court to maintain the integrity of the courtroom outweigh any absolute First Amendment or article I, §8 right of the press or the public to have access to trials.”

## Current Status of Bill

- In January 2023, New York State Senate Bill S160 was introduced, which would repeal Civil Rights Law §52.
- Under the proposed legislation, (a) at least two compact video cameras, each operated by no more than one camera person, (b) at least one still photographer, using not more than two still cameras, and (c) at least one audio system for radio broadcast purposes, would be permitted in trial and appellate court proceedings.
- On May 20, 2024, the New York Senate, by a 58-1 margin, approved the bill, the second year in a row it has done so. The bill will now proceed, for a second year straight, to the Assembly Judiciary Committee, where it died last year.

## Pros and Cons

### Pros

- **Public Right/Public Interest.** Many of those in favor of the bill argue that the public has a right to watch trials—that it would perform educational and civic purposes. This has picked up steam in light of the recent trials in New York involving former President Trump. Televised proceedings are the only way to reach a large population group and educate them as to the working of the judicial system.
- **Transparency and Accountability.** Televised proceedings will ensure that judges are held accountable for their courtroom conduct as well as increasing the overall transparency of the judicial system. Observing courtroom activity contributes to perceptions about the court's commitment to procedural fairness which influences the judiciary's overall legitimacy.
- **Fair Trial:** The Sponsor of the bill, Sen. Brad Hoylman-Sigal, points out that the bill would give the public faith in the judiciary. He has publicly stated that: "The true administration of justice requires public faith in an impartial, unimpeachable, and competent judiciary, but, sadly, New York's court system and accountability proceedings are shrouded in secrecy, fostering perceptions of corruption, incompetence, and unaccountability."
- **Increase the Public's Trust and Understanding of the Sentencing System.** Providing public access to trials and criminal sentencing would likely generate a better understanding and trust for the judiciary system.
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- **Appellate Division Success.** A few years ago, the Appellate Division, First Department followed by other New York Appellate Courts, began publicly live streaming oral arguments. This has proven to be a successful program. Lawyers and the press appreciated the ability to see inside the courtroom while not having to be physically present.
- **Research has uncovered no negative impact—**there has been no clear evidence that cameras in the courtroom place undue hardship on the trial process.
- **Modern technology has made television camera equipment less cumbersome and more discreet.**
- **Court participants would perform in a more professional manner knowing that they are being televised.**
- **Cameras in the courtroom will work to demystify the judicial process, allowing the public to become better informed about courtroom procedures and give viewers an appreciation of our judicial system.**

### Cons

- **Disruption of Court Proceedings:** Like the Bruno Hauptmann trial, there is a belief that cameras in the courtroom can disrupt proceedings. Many people fear that having cameras in the courtroom turn the proceedings into a “circus” of sorts, rather than a serious judicial proceeding. Jurisdictions that have allowed cameras have determined that this is simply not the case.
- **Safety of Judges/Jurors:** A spokesperson for Assembly Judiciary Chairman Charles Lavine, who opposes the present legislation explained that television cameras in the courtroom might imperil the safety and decorum of the courtroom and of participants in the judicial process—judges, lawyers, jurors, parties, witnesses, etc. Certainly, audio-visual coverage of children, sexual assault victims, jurors, and undercover law enforcement personnel should be prohibited and it appears that the Chief Administrative Judge Joseph Zayas is on board with these necessities.
- **Privacy for Criminal Defendants:** The Legal Aid Society, that strongly opposes the bill, has publicly stated that the bill interferes with criminal defendants’ rights, and that it ignores privacy protections written into law concerning family court proceedings. On the other hand, the transparency available through cameras in the courtroom may provide additional protections to those who most need it.
- Witnesses might be increasingly fearful, affecting their testimony.
- Jurors might not concentrate on the actual trial proceedings, instead becoming concerned that they are being televised. Of course any appropriate camera in the courtroom protocol, should completely exclude jurors from being televised. Jurors may be too concerned about the effects of a televised trial and relinquish their concerns about the facts of the case that they are sitting on to their concern about public opinion thereby defeating the aims of the justice system.
- Televised trial carry with them the ubiquitous use of social media for further outside commentary which may have the possibility of influencing the jury.
- Television cameras inherently focus on court participants and as a result, targets them for possible community pressure, threats and abuse.
- Television tends to sensationalize cases.

## Conclusion

On balance, we believe that New York should join the majority of jurisdictions that permit cameras in the courtroom. In our opinion, the factors favoring legislative change are overwhelming. The public will benefit by being introduced in a way, comfortable to most people today—an audio-visual connection, to an institution that plays an important part in their everyday lives but has mostly been inaccessible to them.

Our approval, notwithstanding, is conditioned on the proper rule-making authority, discretion and supervision of the Chief Administrative Judge, which should be augmented by a committee of individuals with the appropriate backgrounds to assist the Chief Administrative Judge.

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