



**Cameras in the Courts:
Improving Transparency, Accountability,
and Public Trust
in New York State's Legal System**

May 16, 2022 (updated October 2023)

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I. Executive Summary

New York is the media capital of the world, but it is one of the few U.S. jurisdictions that prohibits the use of cameras in most courtrooms. New York first banned electronic media coverage in the 1930s, and almost a century later, little has changed; by and large, members of the public wishing to see and hear proceedings in New York trial courts still must attend in person, with all of the cost and inconvenience that entails. This imposes a particularly difficult burden on the elderly, handicapped, and employed individuals who are unable, for a variety of reasons, to attend court proceedings in person. There was a brief period when this was not the case: between 1987 and 1997, the state experimented with a new law that allowed electronic media coverage under certain circumstances. The experiment was largely viewed as a success, but the New York State Legislature, led by then-Assembly Speaker Sheldon Silver, failed to make the experiment permanent, and it expired. Since then, with the spotlight of public scrutiny largely turned away, New York state courthouses have operated without the transparency and oversight that audiovisual coverage brings. As a result, important values, such as public understanding of the judicial system, public scrutiny of important proceedings, and equal treatment under the law, have been compromised.

The introduction in the New York State Legislature of two “cameras in the courts” bills — one by Senator Brad Hoylman,¹ and the other by Assemblyman David Weprin² — in early 2022 prompted the Fund for Modern Courts (“Modern Courts”) to form a Subcommittee on Cameras in the Courts, utilizing the research and drafting assistance of Steptoe & Johnson LLP, to evaluate the relative merits of allowing audiovisual coverage of courtroom proceedings. This report is the result of this evaluative process and it assesses New York’s current policy prohibiting cameras in the courtrooms through a number of lenses.³

First, the report takes a historical view, looking back at the causes of the original prohibition; the contours of the experimental law that, for about a decade, opened proceedings in New York’s trial courts to the media; and two comprehensive post-hoc evaluations of the experimental law.

Second, the report sets forth the findings of a new and comprehensive survey undertaken in 2022 (and updated in 2023) by Modern Courts of the policies of all fifty states and the District of Columbia concerning audiovisual coverage of proceedings in courtrooms.

The survey makes clear that New York is an extreme outlier among the states. An astonishing forty-eight jurisdictions — that is, nearly all of them — allow coverage of both trial and appellate proceedings, although the contours of the applicable rules vary widely, and most

¹ S. S792A. Leg. Sess. 2021-2022 (N.Y. 2022), <https://www.nysenate.gov/legislation/bills/2021/S792>.

² Legis. Assemb. A9592. Leg. Sess. 2021-2022 (N.Y. 2022), <https://www.nysenate.gov/legislation/bills/2021/A9592>.

³ This report is the product of the diligent work of Modern Courts’ Subcommittee on Cameras in the Courts; Dennis Hawkins, Esq., Modern Courts’ Executive Director; and Denise Kronstadt, Esq., Modern Courts’ Deputy Executive Director and Director of Advocacy. Steptoe & Johnson LLP partner Michael Miller and associates Drew Harris and Kate Fisch provided assistance with research and drafting. Members of the Subcommittee on Cameras in the Courts include Hon. E. Leo Milonas, Amy Barasch, Barry Bohrer, Daniel Kummer, Michael Porcelain, and Jenny Yakir.

jurisdictions livestream, over the internet, only appellate-court proceedings. Jurisdictions that permit camera coverage of trial court proceedings generally impose limits to protect the interests of certain legal-process participants. For example, domestic disputes, juvenile cases, jury selection, and proceedings that are closed to the public are often off-limits to the electronic media. Some jurisdictions allow coverage of civil matters but prohibit coverage of proceedings in criminal court. And every jurisdiction vests the presiding judge with broad discretion to determine whether to limit or deny coverage of proceedings. While some jurisdictions simply leave this decision to the sound discretion of the judge, others have more involved procedures in place — requiring a hearing on the matter or instructing the judge to make particular findings of fact or conclusions of law on the record.

Our deep dive allowed us to categorize the jurisdictions into four groups:

- **Open.** Audiovisual coverage is presumed to be allowed, meaning:
 - no request for approval to use a camera in the courtroom is necessary;
 - a request for approval is necessary, but to deny it, the presiding judge must find that the harm in granting the request outweighs the benefit of doing so; or
 - the court routinely webcasts all or most courtroom proceedings.

The consent of neither the parties nor testifying witnesses is required.

- **Open with Some Restrictions.** Audiovisual coverage is not presumed to be allowed, but the court may grant approval. The consent of neither the parties nor testifying witnesses is required.
- **Open with More Restrictions.** Audiovisual coverage is not presumed to be allowed, but the court may grant approval. The express consent of the parties or of testifying witnesses is required in some or all cases, or an objection from a party or witness may automatically preclude coverage either of the entire proceeding or of the objecting witness.
- **Closed.** Coverage is prohibited in all or most trial-court proceedings. Coverage is permitted in appellate proceedings.

Although jurisdictions' approaches vary widely, the experiences of many states, including New York during its ten-year dalliance with courtroom camera use, have been overwhelmingly positive. And the pendulum continues to swing further in the direction of openness. For instance, Michigan now livestreams almost all court proceedings statewide over the internet, and almost every jurisdiction livestreams a video and/or audio feed from its court of last resort, if not others.

Third, and finally, this report evaluates in-court camera use on an issue-by-issue basis, including considerations relating to racial justice, judicial transparency, and the interests of litigants and the public. It does so based on the above-described analyses and information gleaned from a number of relevant stakeholders in recent interviews conducted by Modern

Courts, including trial lawyers, judges and other judicial representatives, members of the media, and representatives of non-profit organizations.

In all, these considerations weigh heavily in favor of opening New York courtrooms to camera coverage, and Modern Courts supports the following broad principles that should guide passage of new legislation at the earliest opportunity:

- Modern Courts is broadly supportive of in-courtroom camera use. The general public should be permitted and empowered to view trial-court proceedings — including witness testimony — remotely, both via court-provided livestreaming over the internet and enhanced, presumptive access to the courts by members of the audiovisual news media.⁴ In short, it is time to repeal the current effective ban on audiovisual coverage of trial proceedings embodied in N.Y. Civil Rights Law section 52.
- Appropriate limits should be placed on the use of cameras in the courts. For instance, there should be a presumption that audiovisual coverage of certain types of proceedings, such as closed proceedings, and certain types of witnesses, such as minors, will not be permitted.
- Trial court judges should be afforded a meaningful degree of control over in-court camera use, and should have discretion to restrict or prohibit camera use where doing so serves the interests of justice.

Legislation drawn along these lines would bring New York back into the mainstream, and would further the goals of increasing the transparency of judicial proceedings, achieving equal treatment under the law, and enhancing public understanding of the judicial process, without unduly burdening the due process rights of litigants or detracting from the dignity of the judicial process.

II. Background: Cameras in New York State Courtrooms

A. Early Legislation

In 1935, Bruno Richard Hauptmann was put on trial in the Hunterdon County Courthouse in New Jersey for the kidnapping and murder of Charles Lindbergh's 20-month-old son. The trial was open to the public and the press alike, and it was covered by some 700 writers and broadcasters and 132 still and video cameramen. Pandemonium ensued, with bright flash bulbs and cameramen standing on witness tables. The cacophony led the judge to prohibit photographic coverage before the trial ended.⁵ The episode triggered considerable concern about the ability of courts to maintain the integrity of their proceedings in the presence of electronic media, and two years later, the American Bar Association released Canons of Judicial Ethics

⁴ This report does not attempt to define who constitutes a member of the “news media,” or address the use of electronic devices by non-media persons. If not addressed via statute, these issues may be left to the discretion of the presiding judge.

⁵ *Television in the Courtroom*, CQ Researcher (Jan. 16, 1981), <https://library.cqpress.com/cqresearcher/document.php?id=cqresrre1981011600>.

banning both photography and radio broadcasting of court proceedings.⁶ In justifying these prohibitions, the ABA wrote, “the taking of photographs in the courtroom . . . and the broadcasting of court proceedings, degrade the court and create misconceptions . . . in the mind of the public and should not be permitted.”⁷ In 1952, to keep up with evolving technology, the Canons were further revised to prohibit television coverage of such proceedings.⁸

The New York State Legislature followed suit, passing section 52 of the New York Civil Rights Law that same year. Section 52 states, in relevant 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 Any violation of this section shall be a misdemeanor.⁹

This short and somewhat cryptic provision, which carries the specter of criminal liability, has had the practical effect of prohibiting audiovisual coverage of any trial proceeding taking place in a New York state court that involves witness testimony, and it remains in effect today. The statute’s passage was motivated primarily by the concern that the presence of cameras would alter the behavior of participants in criminal trials — prosecutors, defense attorneys, witnesses, juries, and judges alike — and would ultimately deprive defendants of their right to a fair trial.¹⁰

B. The Experimental Phase: 1987 – 1997

Although section 52 is still on the books today, it was temporarily abrogated by another law, passed by the state legislature in 1987 and codified as section 218 of the New York Judiciary Law. Section 218 opened up New York State courtrooms to audiovisual coverage by the media on an experimental basis under certain circumstances until it was allowed to expire in 1997.¹¹ The provision did not apply to livestreaming, which was not an economically or technically feasible option at the time, or to persons not affiliated with the news media.¹²

⁶ *Id.*

⁷ *Id.*

⁸ George Winner, *Cameras in the Courtroom?*, N.Y. State Sen. (Apr. 9, 2007), <https://www.nysenate.gov/newsroom/in-the-news/george-winner/cameras-courtroom>.

⁹ N.Y. Civ. Rights Law § 52.

¹⁰ Jay C. Carlisle, *An Open Courtroom: Should Cameras Be Permitted in New York State Courts?*, 18 Pace L. Rev. 297, 298 (1998).

¹¹ N.Y. Jud. § 218(1), (3)(b). Section 218 was allowed to lapse for about a year, in 1991 and 1992. *Courtroom Television Network, LLC, v. State*, 1 Misc.3d 328, 344 (Sup. Ct. N.Y. Cty. July 15, 2003).

¹² N.Y. Jud. § 218(3)(a); *see also* N.Y. Jud. § 218(2)(c) (defining “news media” as “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”).

Section 218 did not guarantee the news media the right to audiovisually cover a proceeding, but rather left the matter up to “the discretion of the presiding trial judge.”¹³ It also established no presumption in favor of or against allowing coverage; instead, the presiding judge was merely required to consider, “at a minimum,” five enumerated 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) whether such coverage would involve lewd or scandalous matters.¹⁴

Section 218 explicitly did not require counsel, parties, or jurors to consent to audiovisual coverage of a proceeding, except during arraignments and suppression hearings, although the presiding judge could limit coverage of any other proceeding where an objection presented “good or legal cause”¹⁵ and had discretion to revoke approval or limit coverage at any time.¹⁶ Moreover, nonparty witnesses were granted the right to have their image be visually obscured during their testimony.¹⁷

Other limitations existed as well. Several types of proceedings could never be covered: conferences in chambers, voir dire, and closed proceedings.¹⁸ Similarly, a variety of persons could not be covered: the jury (except the foreperson, with his or her consent and the trial judge’s approval, while delivering the verdict), undercover police officers (except with their prior written consent), the victim in a prosecution for rape, criminal sexual act, sexual abuse or other sex offense, any arraignment or suppression hearing (except with the prior consent of all parties to the proceeding), any person the coverage of whom “is liable to endanger the safety of any person,” and any family member of a victim or a party in the trial of a criminal case, except while such family member is testifying.¹⁹

Section 218 also included several administrative provisions. First, news media interested in providing audiovisual coverage of a court proceeding were required to file a request, in writing, at least seven days before the commencement of the proceeding.²⁰ Second, the presiding

¹³ N.Y. Jud. § 218(3)(b).

¹⁴ N.Y. Jud. § 218(3)(c).

¹⁵ N.Y. Jud. § 218(5)(a).

¹⁶ N.Y. Jud. § 218(7).

¹⁷ N.Y. Jud. § 218(5)(c).

¹⁸ N.Y. Jud. § 218(7).

¹⁹ *Id.*

²⁰ N.Y. Jud. § 218(3)(a).

judge was required to issue his or her order granting or denying coverage in writing, and the order was “subject only to review by the appropriate administrative judge.”²¹

C. The Feerick Report

In 1995, New York State Legislature created a committee to assess the experiment enabled by section 218.²² The Committee, which was chaired by Fordham Law School Dean John D. Feerick:

- designed and conducted a written survey to assess the experience of New York judges with cameras in the courtroom (which elicited over 350 responses);
- worked with the Marist Institute for Public Opinion on a public opinion survey of private citizens in New York on the issue of cameras in the courtroom;
- “wrote to the presidents and executive directors of 150 bar associations in New York asking for information about the experience of their members”;
- “contacted the New York Law Journal, which agreed, as a public service, to run a prominent notice of the Committee’s interest in receiving public comments” (the Committee received over 50 letters of public comment);
- held 5 public hearings, each announced by press release, at which more than fifty witnesses provided testimony;
- sought Office of Court Administration data regarding media applications for audio-visual coverage;
- sought samples of televised courtroom footage from television stations around the state;
- gathered relevant information on the policies of other states and federal courts and reviewed U.S. Supreme Court precedent as well as relevant legal and psycho-social literature;
- sought information from the deans of all in-state law schools regarding educational use of televised trials;
- solicited information from “eleven jury consultants . . . about their experience with the impact of cameras in the courtroom on jurors and other trial participants;” and

²¹ N.Y. Jud. § 218(3)(b).

²² *An Open Courtroom: Cameras in New York Courts*, New York State Committee on Audio-Visual Coverage of Court Proceedings (1997) (the “Feerick Report”) at 1.

- conferred informally with media scholars, as well as “camera-experienced” attorneys and judges in New York and from other jurisdictions, including other states, and federal courts.²³

The Feerick Committee also stayed in close contact with the California judicial taskforce charged with re-evaluating California’s camera coverage law in the wake of the O.J. Simpson trial.²⁴

In weighing the results of the judicial and public surveys, along with the various points that had been made by witnesses and in letters of public comment, the Committee ultimately concluded that “‘what happens in a trial is a public matter’ and should be accessible to as many interested New Yorkers as possible.”²⁵ The Committee noted that the “benefits that flow from televised coverage of the judicial process are so important that they ought not to be sacrificed by barring cameras from the courtroom across-the-board.”²⁶

On the issues of witness safety and the psychological effect of cameras on courtroom participants, the Committee found that fears regarding the actual impact of cameras on participants had not been realized during the experimental period, and that any such impact should not justify a ban on cameras.²⁷

Finally, while non-party witnesses in criminal proceedings were afforded the option to insist that their image be obscured from coverage, the Committee determined that the same right should not be extended to non-party witnesses in civil proceedings, given heightened safety concerns involved in criminal matters.²⁸

Ultimately, the Feerick Committee made the following recommendations:²⁹

1. “Cameras should be permitted in New York State courts on a permanent basis with all of the safeguards of section 218 for parties, prospective witnesses, jurors, crime victims, and other trial participants.”
2. Camera coverage “should be left to the sound discretion of the trial judge, unfettered by any presumption.” In determining whether to allow cameras, judges should carefully consider any objections raised by parties or non-parties.
3. “The defendant’s consent [in criminal cases] should be a prerequisite for camera coverage of bail hearings,” because the greatest dangers to the criminal defendant’s right

²³ *Id.* at 5-8.

²⁴ *See id.* at xix.

²⁵ *Id.* at 71.

²⁶ *Id.* at 70. The Committee acknowledged the difficulty of determining whether there was a net public benefit resulting from coverage of court proceedings. The Committee emphasized the benefits of public scrutiny of the judicial system, but noted that the record failed to establish that the presence of cameras in courtrooms would actually enhance public understanding of the judicial system.

²⁷ *See id.* at 75.

²⁸ *See id.* at 85.

²⁹ *See id.* at 83-89.

to a fair trial come with pre-trial publicity. Otherwise, the defendant's consent need not be a requirement for camera coverage; openness of proceedings generally acts as a safeguard, not a threat, to the right to a fair trial.

4. "Judges should be vigilant in addressing the safety and privacy concerns of witnesses in both criminal and civil proceedings."
5. "The Office of Court Administration should actively monitor camera-covered proceedings, make periodic reports, and, if necessary, recommend changes in Section 218 of the Judiciary Law and the implementing rules."
6. "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."

D. Expiration of the Experimental Legislation

In spite of the Feerick Committee's favorable assessment of section 218, and its recommendation that the provision be made permanent, section 218 was allowed to expire on June 30, 1997. Though the head of the New York state judiciary, Chief Judge of the New York State Court of Appeals Judith Kaye, supported the Committee's recommendations and argued that the provision should have been permanently instated, the heads of the state's legislative and executive branches, Assembly Speaker Sheldon Silver and Governor George Pataki, were opposed, and that ultimately sealed the legislation's fate.³⁰ With the end of the experiment, section 52 of the Civil Rights Law — with its criminal penalties for filming trial proceedings — went back into operation.

E. NYSBA Special Committee on Cameras in the Courtroom

In June 2000, the New York State Bar Association formed a Special Committee on Cameras in the Courtroom "to evaluate and make recommendations on the issue of audio/visual coverage of court proceedings in civil and criminal matters."³¹ Over the course of almost a year, the Special Committee conducted interviews with the bench and bar in both New York and other jurisdictions and conducted a 50-state survey of the law bearing on the use of cameras in courtrooms.³² It generated a report detailing its findings and proposing parameters for future legislation allowing audiovisual coverage of judicial proceedings in the state.

The Special Committee's 50-state survey led it to the following conclusions:

³⁰ Carlisle, *supra* note 9, at 301.

³¹ NYSBA Special Committee on Cameras in the Courtroom, *Final Report to the House of Delegates* 7 (Mar. 31, 2001).

³² *Id.* at 16, 25.

- Thirty-three states permitted cameras in the courts under conditions roughly similar to those proposed by the Special Committee, although there was so much variation among states that it was hard to neatly categorize their approaches.³³
- Six states required the consent of parties and/or witnesses to audiovisual coverage at the trial level.³⁴ But coverage in such states was rare or non-existent.³⁵
- Only two states (including New York) and the District of Columbia excluded cameras from the court entirely.³⁶

The Special Committee’s interviews, meanwhile, suggested the following:

- There is no pattern of specific harm in specific cases and no substantial evidence that cameras adversely affect the outcome of trials.³⁷
- Cameras did not make jury selection more difficult.³⁸
- There was no juror-distraction effect, except for the distraction of camera people coming in and out of the courtroom and the use of flash cameras — which can be mitigated via appropriate rules.³⁹
- Of 24 lawyers and judges who opined on the subject, only one felt that cameras impacted the outcomes of cases, but even that person did not know for sure. Another person said that he did not know. The others felt that cameras did not impact case outcomes.⁴⁰

The Special Committee concluded that New York was an outlier in disallowing audiovisual coverage of practically all court proceedings, and there was little or no reason to believe that judicial proceedings in states allowing audiovisual coverage were adversely affected by that coverage. To the contrary, allowing audiovisual coverage would, under the right circumstances, “aid the public in understanding the legal system and the lawyer’s role in it,” and further, “that public understanding and trust is fundamental to our system of justice and our ability to function as lawyers.”⁴¹

Accordingly, like the Feerick Committee before it, the NYSBA Special Committee concluded that New York’s lapsed experiment in audiovisual coverage of courtroom proceedings had been a success. The report recommended that the experiment be extended for two years,

³³ *Id.* at 25.

³⁴ *Id.* at 26.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 3.

³⁸ *Id.* at 16.

³⁹ *Id.* at 17.

⁴⁰ *Id.*

⁴¹ *Id.* at 3, 27.

with certain minor modifications that were discussed in the report.⁴² Accepting the Special Committee’s recommendation, the NYSBA House of Delegates subsequently voted to recommend, in turn, that the State Legislature allow in-courtroom camera use, with appropriate safeguards and without a consent requirement.⁴³

F. The Current Regime: Section 52 Prohibits Most In-Court Camera Use

In the years following the expiration of section 218, certain media organizations attempted to use the court system to invalidate section 52’s effective ban on audiovisual coverage of trial court proceedings. Although these cases initially saw mixed success,⁴⁴ in 2005, in a case brought by Court TV, the New York Court of Appeals upheld the constitutionality of section 52, sending the issue back to the New York State Legislature, which has simply allowed section 52 to remain in place.⁴⁵

Because section 52 prohibits audiovisual coverage of “proceedings, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court,” coverage of such proceedings is never permitted in New York state trial courts. However, section 52 does not prohibit coverage of trial court proceedings in which compulsory witness testimony may not be taken, and, as a result, coverage of qualifying proceedings is currently permitted under court rules upon order of the presiding trial judge.⁴⁶

Likewise, section 52 does not apply to proceedings in appellate courts, and the New York State Unified Court System’s administrative rules allow audiovisual coverage of appellate arguments by the media, but only with the permission of *both* (1) the Chief Administrator of the Courts or a designee of the Chief Administrator and (2) the Chief Judge of the Court of Appeals or the presiding justice of an Appellate Division.⁴⁷ Moreover, the New York State Court of

⁴² *Id.* at 3–6.

⁴³ LIBN Staff, *The New York State Bar Association's 2002 legislative agenda contains the conventional lawyer-supported issues, such as more money for legal services and increased pay for court assigned counsel. However, initiatives allowing cameras in the courtroom and simplifying case resolution for the middle class will be given some precedence in the new year.*, Long Island Business News (Jan. 25, 2002), <https://libn.com/2002/01/25/the-new-york-state-bar-associations-2002-legislative-agenda-contains-the-conventional-lawyersupported-issues-such-as-more-money-for-legal-services-and-increased-pay-for-court-assigned-counsel-however/>.

⁴⁴ *Compare People v. Boss*, 182 Misc.2d 700, 705 (Sup. Ct. Albany County 2000) (holding that section 52 was unconstitutional), with *Santiago v. Bristol*, 273 A.D.2d 813, 709 N.V.S.2d 724 (4th Dept. 2000) (holding that the trial court lacked authority to permit cameras in the court and declining to find section 52 unconstitutional).

⁴⁵ *Courtroom Television Network LLC v. New York*, 5 N.Y.3d 222, 234 (2005) (upholding Civil Rights Law section 52 in the face of challenges under the First Amendment to the United States Constitution and article I, section 8 of the New York State Constitution).

⁴⁶ N. Y. Ct. Rules, § 131.3(a). We are not aware of instances in which trial court proceedings have actually been covered under this exception to section 52. *Cf. CC v. DD*, 64 Misc.3d 828 (N.Y. Supr. Ct. N.Y. Cty. June 27, 2019) (“The court does not decide whether videotaping could be permissible (although not required) under Civil Rights Law section 52 for non-trial status or compliance conferences because, even if videotaping were permissible at such conferences, in this case, the court declines to allow it.”). However, New York’s administrative rules were amended in 2016 to allow some video coverage of arraignments. *See* N. Y. Ct. Rules, § 131.1(c) (“Audio-visual coverage of party or witness testimony in any court proceeding (other than a plea at an arraignment) is prohibited.”).

⁴⁷ 22 N.Y. C.R.R. Part 29.

Appeals and all four departments of the Supreme Court’s Appellate Division have been livestreaming oral arguments for over five years.⁴⁸

III. Survey of U.S. Jurisdictions

We conducted an in-depth analysis of the extent to which each of the 50 states and the District of Columbia permit audio-visual coverage of state court proceedings, and compiled data on the applicable state statutes, court rules, constitutional provisions, and/or canons of judicial ethics for those jurisdictions as well as information concerning their experiences with camera coverage of courtroom proceedings. This section details our findings.

A. General Observations

The majority of U.S. jurisdictions allow audio-visual coverage of court proceedings to a greater extent than New York rules currently permit. Forty-eight jurisdictions allow coverage of both trial and appellate proceedings, although the contours of the applicable rules vary widely. New York is one of the most restrictive courts in terms of allowing media coverage of proceedings, though it is not the most restrictive. That distinction goes to the District of Columbia, which has a blanket prohibition of coverage of any local court proceedings, at both the trial and appellate court levels.

In jurisdictions that permit camera coverage of trial court proceedings, the applicable state statutes and court rules tend to prohibit coverage of certain types of matters or proceedings, such as domestic disputes, juvenile cases, jury selection, or proceedings that are closed to the public. Some jurisdictions allow coverage of civil matters but prohibit coverage of all proceedings in criminal court. Every jurisdiction vests broad discretion in the presiding judge to determine whether to permit, limit, or deny coverage of proceedings. While some jurisdictions simply leave this decision to the sound discretion of the judge, others have more involved procedures in place — requiring a hearing on the matter or instructing the judge to make particular findings of fact or conclusions of law on the record.

Most jurisdictions rely on the news media to provide the public with audiovisual coverage of lower-court proceedings. Although almost all jurisdictions livestream audio or video coverage of oral arguments in their court of last resort, only a handful do so in lower courts. And of those, only Michigan currently provides comprehensive coverage of almost every lower court, although Florida recently inaugurated, on a limited basis, a livestreaming system

⁴⁸ Court of Appeals arguments are livestreamed at <https://www.nycourts.gov/ctapps/live.html>. First Department arguments are livestreamed at <https://www.youtube.com/channel/UCK8inKbo7p8Pn5zbc7X71nw/featured>. Second Department oral arguments are livestreamed at <http://wowza.nycourts.gov/ad2/ad2.php> and <http://wowza.nycourts.gov/ad2/ad2-2.html>. Third Department arguments are livestreamed at <http://wowza.nycourts.gov/ad3/ad3.php>. Fourth Department arguments are livestreamed at <https://ad4.nycourts.gov/go/live/>.

that appears to be similar to Michigan’s, with apparent plans to expand it to cover more courtrooms over time.⁴⁹

Although states take a wide variety of approaches, a common thread tying these states together is the absence of any evidence that the gravest of the concerns raised by those who have opposed the use of cameras in courtroom — that a witness whose testimony was broadcast might be injured or killed as a result — has ever materialized.

B. Constructing the Survey

Building on existing compilations of relevant data,⁵⁰ we conducted a close review of each jurisdiction’s constitutional provisions, statutes, rules, and codes of judicial conduct, as applicable.

For each jurisdiction, we noted the various procedures, safeguards, and requirements embedded in the rules — for example, whether the rule provides for a presumption in favor of camera coverage, whether party consent is required, and whether coverage of certain types of matters or proceedings is prohibited. As discussed above, these factors vary widely by state.

For the jurisdictions highlighted as case studies below, we also collected and reviewed relevant legislative, regulatory and judicial history, as well as relevant news articles, reports, and other available information.

C. Jurisdictional Groups

We categorized the jurisdictions into four groups depending on how permissive or restrictive their rules are regarding audio-visual coverage of court proceedings: (1) Open, (2) Open with Some Restrictions, (3) Open with More Restrictions, and (4) Closed.

A handful of key factors set these four groups apart. The first, and perhaps most important, is whether the jurisdiction allows coverage at all. As discussed above, the vast majority of jurisdictions do. But a small handful, including New York, generally do not.

The second factor is whether the jurisdiction requires the presiding judge to apply a presumption in favor of audiovisual coverage. Most states require the proponent of coverage — namely, a member of the media organization seeking authorization to cover the proceeding — to submit a written application to the presiding judge prior to the start of the proceeding. Some state rules create a presumption in favor of coverage once a request is submitted, while others require the presiding judge to explicitly approve a request before coverage can begin. Some

⁴⁹ Press Release, Supreme Court of Florida, *Expanded Public Access to Florida’s Courts via the Virtual Courtroom Directory* (Apr. 19, 2021), available at <https://www.floridasupremecourt.org/content/download/732616/file/04-19-2021-Virtual-Courtroom-Directory-Final.pdf>.

⁵⁰ Radio Television Digital News Association, *Cameras in the Courts: A State-by-State Guide* (2012), available at https://www.rtdna.org/article/cameras_in_the_court_a_state_by_state_guide_updated; Reporters Committee for Freedom of the Press, *Open Courts Compendium*, available at <https://www.rcfp.org/open-courts-compendium/>.

jurisdictions dictate that in order for the presiding judge to deny or limit coverage, they must make certain findings of fact on the record.

The third factor distinguishing these groups is whether consent of the parties to the proceeding is required for coverage to be permitted. While some states require such consent to be given in writing, others allow the presiding judge to authorize coverage over the objection of a party. Some state rules permit the court to limit coverage of certain objecting witnesses, or only require party consent in certain types of matters, such as family court or juvenile cases. A description of the criteria for each of the four groups follows in sections III(D) through III(G), below.

After categorizing each jurisdiction into one of these four groups, we then identified jurisdictions in each group that could serve as potential case studies. For each of those jurisdictions, we conducted research surrounding the history of the applicable state statutes or court rules, as well as a review of any media stories or case law discussing the use of cameras in state courts. The following sections of this report outline the specific criteria that distinguish each of the four groups and delve into jurisdictional case studies that highlight the variety of ways in which states handle media coverage.

D. Group 1: Open

Jurisdictions classified as “Open” are those that have the least-restrictive rules governing audiovisual coverage of courtroom proceedings. Open jurisdictions are those in which:

- (1) Audiovisual coverage is presumed to be allowed, meaning that one of the following is the case:
 - a. no request for approval to use a camera in the courtroom is necessary;
 - b. a request for approval is necessary, but to deny it, the presiding judge must find that the harm in granting the request outweighs the benefit of doing so; or
 - c. the court routinely webcasts all or most courtroom proceedings.
- (2) The consent of the parties or of testifying witnesses is not required.

In such jurisdictions, the judge may need to state specific findings on the record if denying a request for audiovisual coverage.

In all, eighteen of the jurisdictions we surveyed were classified as Open:

- Alaska
- Arizona
- Florida
- Hawaii
- Iowa
- Massachusetts
- Michigan

- Mississippi
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- North Carolina
- Utah
- Vermont
- Wisconsin

Of these, only Michigan routinely webcasts all or most courtroom proceedings. The others rely entirely or in large part on the presence of the media or others with electronic recording equipment. Some of these, including Florida, Montana, North Carolina, and Vermont, do not require that any request to cover a proceeding be made.⁵¹ The remainder of the Open jurisdictions — Alaska, Arizona, Hawaii, Iowa, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, and New Jersey — require an advance request, with the principal variation being how far in advance the notice must be filed.⁵² On one end of the spectrum lies Nevada, which requires only 24 hours’ notice; on the other lies Arizona, which, for trials, requires 7 calendar days’ notice.⁵³ New Jersey does not set a fixed deadline, instead requiring that “[t]he request . . . be presented to the court within a reasonable time prior to the commencement of the proceeding to permit the court adequate time to consider the request.”⁵⁴

In all of these jurisdictions, coverage is presumptively permitted. However, each of them grants the presiding judge discretion to limit coverage for various reasons. For instance, Hawaii allows the judge to prohibit coverage “for good cause.” Good cause for denying coverage is presumed to exist in connection with suppression hearings, testimony regarding trade secrets, the testimony of a child witness, and the testimony of a complaining witness in a criminal sexual offense case, and may exist in other situations, as determined by the presiding judge.⁵⁵ Other jurisdictions are less specific; New Hampshire, for example allows the judge to limit or deny coverage upon a showing that doing so would advance a public interest, is no broader than necessary, and there is no less restrictive alternative. It does not further explain what criteria the court must consider.⁵⁶

⁵¹ See Fla. R. Jud. Admin. 2.450; Mont. Canon of Jud. Ethics 35; N.C. R. Prac. Super. & Dist. Ct. 15(b); V.R.C.P. Rule 79.2.

⁵² See Alaska R. Admin. 50; A.R.S. Sup. Ct. R. 122(c); HI Sup. Ct. R. 5.1(e); Iowa Ct. R. 25; Mass. Sup. Jud. Ct. R. 1:19(e) (judge may, but need not, require advance notice); Mich. Sup. Ct. Admin. Order 1989-1(2)(a)(i); Miss. R. Elec. & Photog. Cov. of Jud. Proc. 5; Neb. Ct. R. § 6-2003(A); Nev. Sup. Ct. R. 230(1); N.J. Sup. Ct. Guidelines on Media Access and Elec. Devices in the Cts. § G(1).

⁵³ See Nev. Sup. Ct. R. 230(1); A.R.S. Sup. Ct. R. 122(c)(2)(A).

⁵⁴ N.J. Sup. Ct. Guidelines on Media Access and Elec. Devices in the Cts. § G(1).

⁵⁵ HI Sup. Ct. R. 5.1(f)(3), (5).

⁵⁶ See, e.g., N.H. Super. Ct. R. 204(f).

Moreover, some jurisdictions categorically prohibit coverage of certain types of proceedings or certain aspects of proceedings. For instance, Hawaii prohibits coverage of proceedings that are closed to the public, including juvenile cases and cases involving child abuse or neglect, paternity, or adoption. It also prohibits coverage of jurors, attorney-client conferences, in camera proceedings, and bench conferences.⁵⁷ Similarly, Nevada prohibits coverage of proceedings that are closed to the public, and of conferences among juries, clients, and judges, as well as coverage of the jury (to the extent possible).⁵⁸ Other jurisdictions, such as Montana, have no such categorical prohibitions, and instead rely on the judge’s exercise of his or her discretion.⁵⁹ None of these jurisdictions, however, provides a party, witness, or anyone else a veto or consent right.

1. Case Study Jurisdiction: Florida

Florida was one of the first states to open its courts to audiovisual coverage, and it has some of the most liberal rules of any U.S. jurisdiction.⁶⁰ Under Florida Rule of Judicial Administration 2.450, electronic media and still photography coverage of all public judicial proceedings, whether in appellate or trial court, is allowed.⁶¹ Coverage “[s]ubject at all times to the authority of the controlling judge to: (i) control the conduct of proceedings before the court; (ii) ensure decorum and prevent distractions; and (iii) ensure the fair administration of justice in the pending cause,” and is subject to certain largely technical standards of conduct and technology.⁶² Even still, the rules specify that “[a]t least 1 portable television camera, operated by not more than 1 camera person, shall be permitted in any trial or appellate court proceeding.”⁶³

Limits on coverage are few: There is no requirement that the media request permission to cover a given proceeding in advance; neither the consent of the parties nor the consent of any witnesses is required; and, unlike in most other jurisdictions, in Florida, there is no prohibition on coverage of jurors. The primary limitation on coverage is that proceedings that are closed to the public, such as adoption proceedings, are also closed to the media.⁶⁴ Florida courts also have authority to prohibit coverage of individual trial participants, such as witnesses and jurors, upon finding of substantial effect on the particular individual that would be “qualitatively different” from effect of traditional media coverage.⁶⁵

⁵⁷ HI Sup. Ct. R. 5.1(g).

⁵⁸ Nev. Sup. Ct. R. 238-42.

⁵⁹ Mont. Canon of Jud. Ethics 35.

⁶⁰ When Florida enacted a provision permanently allowing audiovisual coverage of court proceedings, only six other jurisdictions had a similar, permanent provision in place. *Petition of Post-Newsweek Stations, Fla., Inc.*, 370 So.2d 764, 787 (Fla. 1979). Colorado was the first state, allowing television camera cameras in its courts in 1956. CQ Researcher, *supra* note 4.

⁶¹ Fla. R. Jud. Admin. 2.450(a).

⁶² *Id.*

⁶³ Fla. R. Jud. Admin. 2.450(b)(1).

⁶⁴ Fla. R. Jud. Admin. 2.450(a)(iii).

⁶⁵ *Post-Newsweek Stations*, 370 So. 2d at 779.

Oral arguments before the Florida Supreme Court are livestreamed over the internet,⁶⁶ as are a variety of proceedings from a limited number of Florida’s judicial circuits and district courts (which can include first appearances, arraignments, criminal pre-trial hearings, violation of probation, criminal and civil trials, and oral arguments, depending on the court) through Florida’s new Virtual Courtroom Directory.⁶⁷

Florida courts were not always so friendly to audiovisual coverage. For decades, Florida’s rules comported with Canon 3A(7) of the American Bar Association’s Code of Judicial Conduct, which instructed judges to prohibit coverage.⁶⁸ Change came quickly, though: in 1975, Post-Newsweek Stations, Florida, Inc., a television broadcasting company, filed a petition in the Florida Supreme Court to allow cameras and other electronic media in Florida courts.⁶⁹ The court declined to grant the petition immediately, but instead set out to evaluate Canon 3A(7), establishing an experimental program involving a small set of trials that would be subject to audiovisual coverage. The program was a total failure; it conditioned audiovisual coverage of trials on the consent of the litigants, and such consent proved to be unobtainable in every instance. Accordingly, the court modified the program, creating a one-year program “during which the electronic media would be permitted to cover judicial proceedings in the courts of [the] state, without participant consent.”⁷⁰

This revamped version of the experiment was a success; a post hoc sample survey revealed, among other things, that “the presence of electronic media disrupted the trial either not at all or only slightly”; that the ability of attorneys and jurors was not affected at all; that neither the participants’ perception of the judiciary nor the dignity of the proceedings was affected; and that the presence of electronic media made jurors and witnesses feel slightly more responsible for their actions. Moreover, participants felt the same level of concern about being harmed in the context of electronic media broadcasting as they did in the context of their names appearing in the print media. On the other hand, witnesses and attorneys were slightly distracted by the presence of electronic media; witnesses were slightly inhibited by the presence of electronic media; and court personnel and attorneys perceived that participating attorneys’ actions were more flamboyant in the presence of electronic media, albeit only to a slight extent. Participating Florida judges were surveyed separately, and their response was largely (though not uniformly) positive.⁷¹

In April 1979, after considering the results of the trial and voluminous written materials submitted in connection with the proceeding, the Supreme Court of Florida issued an opinion that radically changed the Florida court system’s posture toward audiovisual coverage, amending

⁶⁶ *Oral Argument Broadcasts & Ceremonial Sessions*, Florida Supreme Court, <https://www.floridasupremecourt.org/Oral-Arguments/Oral-Argument-Broadcasts>.

⁶⁷ *Florida Virtual Courtroom Directory*, Florida Courts, <https://courtrooms.flcourts.org/>.

⁶⁸ Fla. Code Jud. Conduct, Canon 3 A(7); ABA Code Jud. Conduct, Canon 3A(7) (1972). ABA Code of Judicial Conduct Canon 3A(7) superseded ABA Canon of Professional and Judicial Ethics 35 (1937).

⁶⁹ *Petition of Post-Newsweek Stations*, 370 So.2d at 765.

⁷⁰ *Id.* at 766.

⁷¹ *Id.* at 768-71.

Canon 3A(7) of the Florida Code of Judicial Conduct to allow electronic media and still photography coverage of public judicial proceedings.⁷²

The court based its decision on three considerations: First, the “prime motivating consideration” was Florida’s “commitment to open government,” pursuant to which reporters were already free to report whatever occurs in open court, and to cover electronically whatever happens outside of the courthouse. Second, “public knowledge and understanding of the judicial process [was] at a low ebb.” And third, the court pointed to “the lack of any serious problems of disruption occurring during the term of the pilot program.”⁷³

Under the rules established by *Petition of Post-Newsweek Stations*, Florida courts have been remarkably open, allowing audiovisual coverage of cases that have enthralled the nation and sparked robust public discourse, including:

- The 1979 trial of Ted Bundy for the murders of two Florida women.⁷⁴
- The 1991 trial of William Kennedy Smith for the rape of Patricia Bowman.⁷⁵
- The 2000 Florida Supreme Court proceedings regarding the counting of ballots in connection with the presidential election.⁷⁶
- The 2011 trial of Casey Anthony for various offenses, including murder, in connection with the death of her two-year-old daughter.⁷⁷ Forty million Americans watched the trial unfold on live television.⁷⁸
- The 2013 trial of George Zimmerman for the murder of Trayvon Martin.⁷⁹

Florida courts have shown a willingness to allow audiovisual coverage even of situations that courts in other states would very likely decline to allow coverage of. For instance, in 2010, a court allowed television coverage of the trial of a Miami man who was accused of murdering a couple in front of their 10-year-old daughter. The defendant had a distinctive crucifix tattoo on each of his cheeks, making him instantly recognizable, and his lawyers argued that allowing

⁷² *Id.* at 781. In 1994, Canon 3A(7) was ported over to the Florida Rules of General Practice and Judicial Administration as Rule 2.450.

⁷³ *Petition of Post-Newsweek Stations*, 370 So.2d at 780-81.

⁷⁴ Chris Harris, *A Brief History of Some of America's Most Notorious Televised Trials*, People Magazine (Feb. 11, 2020).

⁷⁵ Dominick Dunne, *The Verdict*, Vanity Fair (Mar. 1992) (“Along with the Persian Gulf War, the Supreme Court confirmation hearings of Clarence Thomas, the Soviet coup, and the resignation of Mikhail Gorbachev, Smith’s trial was one of last year’s most watched television events.”).

⁷⁶ *Florida Supreme Court Hearing*, C-Span (Dec. 7, 2000), <https://www.c-span.org/video/?161086-1/florida-supreme-court-hearing>.

⁷⁷ CQ Researcher, *supra* note 4.

⁷⁸ Steve Helling, *Casey Anthony Juror Speaks Out 10 Years Later: 'My Decision Haunts Me'*, People Magazine (May 21, 2021), <https://people.com/crime/casey-anthony-juror-speaks-out-10-years-later-my-decision-haunts-me/>.

⁷⁹ Greg Botelho & Holly Van, *George Zimmerman found not guilty of murder in Trayvon Martin's death* (July 14, 2013), <https://www.cnn.com/2013/07/13/justice/zimmerman-trial/index.html>.

coverage could unfairly prejudice jurors before and during his trial. The court ultimately sided with local news organizations, who argued that “[t]he people in the community would be able to read about [the case] just as easy as if they were to see it on television.”⁸⁰ More recently, in 2021, a Tampa court allowed audio (though not video) coverage of an 11-year-old boy testifying as a witness, against his father, in a double-murder case relating to the death of the boy’s own mother and sister, where the boy was himself injured and almost killed as well.⁸¹

A separate rule, Florida Rule of Judicial Administration 2.451, governs the use of electronic devices in courtrooms more generally, including all use of electronic devices by persons who are not members of the media, and it defers entirely to “the authority of the presiding judge or quasi-judicial officer.”⁸²

We have been unable to find any evidence of adverse consequences arising from audiovisual coverage of Florida court proceedings. Former Florida Supreme Court Chief Justice Arthur J. England, Jr., argued in 2009 that there had been none whatsoever, writing, “As Florida celebrates 30 years of informing citizens of what occurs in its courtrooms, all of the arguments against cameras in courtrooms have proved to be wrong. No serious problems have arisen because of cameras in Florida courtrooms. Not one problem!”⁸³

2. Case Study Jurisdiction: Michigan

Michigan’s rules concerning audiovisual coverage of court proceedings are almost — but not quite — as liberal as Florida’s. Yet Michigan court proceedings are far more accessible than Florida’s, because the vast majority of them are livestreamed over the internet using permanently installed courtroom cameras and Zoom feeds from remote participants’ personal-device cameras. One needs only to visit the Michigan courts’ livestreaming site⁸⁴ to see that proceedings from

⁸⁰ David Ovalle, *Judge allows news cameras for trial of tattooed Miami murder suspect*, Miami Herald (July 23, 2010).

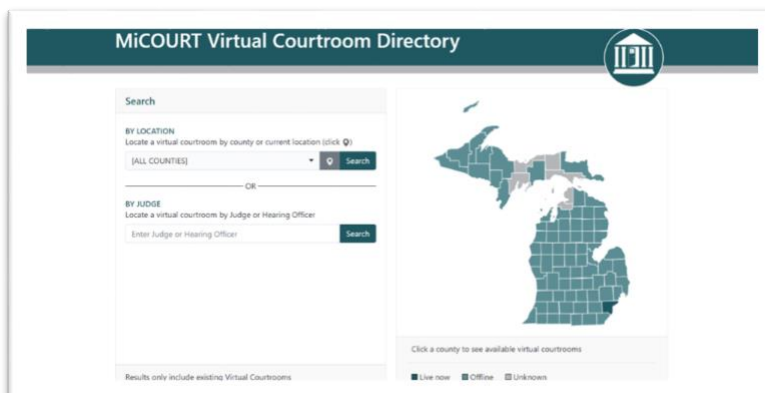
⁸¹ *'You stabbed me,' boy tells father during unusual moment in Florida courtroom*, NBC News (June 17, 2021), <https://www.nbcnews.com/news/us-news/you-stabbed-me-boy-tells-father-during-unusual-moment-florida-n1271209/>.

⁸² Florida Rule of Judicial Administration 2.451(c)(1).

⁸³ Arthur R. England, Jr., *Cameras in Florida’s Courts: 30 years and counting*, Florida Bar News (Apr. 1, 2015), <https://www.floridabar.org/the-florida-bar-news/cameras-in-floridas-courts/>.

⁸⁴ Court Livestreams, Michigan Courts, <https://www.courts.michigan.gov/court-livestream/>.

many of the state’s trial and appellate courts are available for viewing on demand, via an easy-to-use graphical interface:



Clicking on or selecting a county and then selecting a courtroom typically routes the user to YouTube, where a livestream is available.⁸⁵ There, the user can see multiple feeds at a time; for instance, in a criminal matter we observed, the judge, the prosecutor, and the defendant were all separately visible. The judge was in the courtroom, but the prosecutor participated via a laptop, and the defendant appeared to be using a mobile phone.

Recordings of past proceedings do not appear to be available at the trial court level.

Michigan’s sophisticated livestreaming platform means that anyone with a high-speed internet connection can watch, from almost anywhere in the world, almost any proceeding taking place in a Michigan courtroom, regardless of whether the press chooses to cover it. However, Michigan courts also allow the media — and only the media⁸⁶ — to “record[] or broadcast[] court proceedings . . . using television, radio, photographic, or recording equipment.”⁸⁷ Such recording and broadcasting is permitted by default without express approval by the court, and the judge has the right to terminate or limit coverage at any time and to “exclude coverage of certain witnesses, including but not limited to the victims of sex crimes and their families, police informants, undercover agents, and relocated witnesses.”⁸⁸ The judge’s decision is not appealable.⁸⁹

Unlike Florida, Michigan requires that the media agency make a request, at least three business days before the proceeding is scheduled to begin, though the presiding judge may waive

⁸⁵ At least one courtroom appears to stream proceedings through Facebook.

⁸⁶ Mich. Admin. Order No. 1989-1 § 2(a)(i) (allowing “[f]ilm or electronic media coverage”); *id.* at § 1(a) (defining “Film or electronic media coverage” as “any recording or broadcasting of court proceedings by the media”); *id.* at § 1(b) (defining “Media” as “any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering agency”).

⁸⁷ *Id.* § 1(a).

⁸⁸ *Id.* § 2(a)(i)-(ii).

⁸⁹ *Id.* § 2(a)(iv).

that requirement. The parties must be notified of any such request. Michigan prohibits coverage of jurors and of the jury selection process.⁹⁰

Michigan's rules permitting audiovisual media coverage of court proceedings were promulgated in 1989, upon the completion of a one-year pilot program. The pilot program's rules were similar to Michigan's current rules, except that witnesses had the right to refuse coverage of their testimony — a right that witnesses in Michigan proceedings no longer possess.⁹¹ After the completion of the pilot program, the Committee voted 9-1 to ask the Michigan Supreme Court to make the program permanent. The Committee's chair, Michigan Court of Appeals Judge Joseph Sullivan, explained the Committee's reasoning thusly: "The public has a right to know and the public's right to know is fulfilled only in part by the newspapers. . . . We feel that this would open the coverage of court matters to the general public."⁹² In 1989, the Michigan Supreme Court passed Administrative Order No. 1989-1, which is still in place today.

Michigan's policy of relatively open media access to its state court system has not led to widespread media coverage of court proceedings. Outside of a few high-profile cases, media inquiries have been exceedingly rare.⁹³ But the availability of livestreaming over the internet has made it easier for the public to view Michigan court proceedings, and as of May 2021, Michigan court proceedings had been viewed nearly 38 million times on YouTube.⁹⁴ Reacting to the popularity of the court system's livestreaming platform, Michigan Supreme Court Chief Justice Bridget Mary McCormack stated, "The court belongs to the people. I am firmly of the view that the more people who can see what happens in court cases, the better."⁹⁵

E. Group 2: Open with Some Restrictions

Jurisdictions classified as Open with Some Restrictions are those that have some restrictive rules governing audiovisual coverage of courtroom proceedings. These jurisdictions are those in which:

1. Audiovisual coverage is not presumed to be allowed, but the court may grant approval.
2. The consent of the parties or of testifying witnesses is not required.

In these jurisdictions, the judge may have broad discretion in approving or denying a request for audiovisual coverage.

In all, twenty of the jurisdictions we surveyed were classified as Open with Some Restrictions:

⁹⁰ *Id.* § 2(a)(iii).

⁹¹ *Michigan to Allow Recording in Courts*, Chi. Trib. (Aug. 28, 1987).

⁹² *Michigan Committee Backs Courtroom TV*, Chi. Trib. (Nov. 23, 1988).

⁹³ Hillary Brody Anchill, *Cameras in the Courts: Rules Vary but Change Afoot*, Downtown Newsmagazine (Nov. 24, 2021), <https://www.downtownpublications.com/single-post/cameras-in-the-courts-rules-vary-but-change-afoot>.

⁹⁴ *Id.*

⁹⁵ *Id.*

- Arkansas
- California
- Colorado
- Delaware
- Georgia
- Idaho
- Indiana
- Kentucky
- Minnesota⁹⁶
- Missouri
- North Dakota
- Oklahoma
- Oregon
- Rhode Island
- South Carolina
- Tennessee
- Virginia
- Washington
- West Virginia
- Wyoming

We observed a number of interesting trends among the states categorized as Open with Some Restrictions. Each of these jurisdictions permits audiovisual coverage of both civil and criminal matters at both the trial and appellate level (though in states like Delaware, which permits coverage of civil proceedings only, procedures in courts other than the state’s court of last resort can vary).

We observed the most variety among these states in terms of how much discretion the presiding judge retains in determining whether to permit, limit, or deny coverage, and on what grounds. In some states, such as Rhode Island, South Carolina, and Virginia, the judge has relatively broad discretion over coverage of proceedings. In six states, the presiding judge must make particular findings of fact on the record before denying or limiting coverage, and in others, the judge must weigh certain factors that are expressly outlined in the rule or statute. In these cases, the judge is typically required to consider only three to five listed factors — in California, eighteen factors are listed and the judge is further able to consider any other aspect of the case he or she deems relevant.

⁹⁶ The May 2022 version of this report classified Minnesota as an Open with More Restrictions jurisdiction. However, a March 15, 2023 order by Minnesota Supreme Court Chief Justice Lorie Gildea granted judges discretion to allow cameras or other recording devices in the courtrooms even without the consent of all parties to the matter. Steve Karnowski, *Minnesota Courts Expand Camera Access to Criminal Trials*, Associated Press (Mar. 15, 2023), available at <https://apnews.com/article/court-cameras-allowed-minnesota-9e9a4b623a99b047c79adaa15c6f7e22>. As a result, we have reclassified Minnesota as Open with Some Restrictions.

1. Case Study Jurisdiction: California

In November 1965, the Judicial Council for the State of California first adopted Rule of Court 980 (later renumbered to 1.150),⁹⁷ which governs media coverage of state court proceedings. In its original form, the rule prohibited photographing, recording, or broadcasting in the courtroom, though exceptions were made for coverage of ceremonial proceedings. In 1966, at the request of the Assembly Interim Committee on Fair Trial and Free Press, the Judicial Council conducted a limited number of experiments concerning the use of courtroom photography. These experiments were conducted in certain trials with the permission of all participants, and any photographs taken could not be used for broadcasting or commercial purposes.⁹⁸

In 1979, California Supreme Court Chief Justice Rose Elizabeth Bird, the first female Chief Justice in the state, appointed a Special Committee on the Courts and the Media to consider amendments to Rule 1.150. After adopting an experimental rule and conducting a study on the results of the experimental program, the Judicial Council adopted an amended Rule 1.150 that took effect in 1984. The new rule permitted film and electronic media coverage of all civil and criminal proceedings at both the trial and appellate level throughout the state.⁹⁹

Rule 1.150 was examined a second time only a decade later, in the aftermath of the widely-televised O.J. Simpson trial in California state court in Los Angeles. In 1995, Chief Justice Malcolm M. Lucas appointed a 13-member task force consisting of judges, attorneys, and court administrators, that was charged with determining whether and how the rule should be amended. The task force issued its report in May 1996, which concluded that despite the fact that a majority of California judges proposed banning cameras from courtrooms, a total ban on coverage would be inconsistent with the Judicial Council's goals of increasing public access to courts.¹⁰⁰ Instead, the task force recommended a ban on coverage of pre-trial proceedings in criminal cases, and further recommended that in both civil and criminal cases, only the portions of proceedings heard by the trier of fact be televised. These proposals were designed to limit camera access "where the potential for prejudice to the rights of the parties and the ability to influence potential jurors is the greatest."¹⁰¹

On January 1, 1997 an amended Rule 1.150 became effective. Notably, the amended rule retained judicial discretion over audio-visual coverage in all cases, including both trial and pre-trial proceedings, despite the recommendation of the task force. The new rule also prohibited coverage of jurors, jury selection, and courtroom spectators, and listed 18 factors that judges should consider in ruling on a request to cover court proceedings.¹⁰² The rule also required the party requesting to cover proceedings to provide five days' advance notice absent good cause.

⁹⁷ For avoidance of confusion, we refer to this rule as Rule 1.150 going forward.

⁹⁸ *A Brief History of California Rules of Court, Rule 1.150*, Superior Court of California, County of Riverside, available at https://www.riverside.courts.ca.gov/GeneralInfo/MediaInfo/history_crc1_150.pdf.

⁹⁹ *Id.*

¹⁰⁰ Feerick Report at 21.

¹⁰¹ *Id.*

¹⁰² *A Brief History of California Rules of Court, Rule 1.150*.

The development of California Rule of Court 1.150 factored heavily into New York’s consideration of its own rules regarding camera coverage of court proceedings. The Feerick Committee reported that it maintained close contact with the California task force charged with evaluating Rule 1.150 from 1995 to 1996. In fact, the Chair of the California task force, Associate Justice Richard D. Huffman of the California Court of Appeal, flew to New York to testify at a hearing held by the Feerick Committee in 1996, a few months after the California task force had issued its recommendation. The Feerick Committee also heard testimony from one of the criminal defense attorneys who participated in the O.J. Simpson trial, Professor Barry Scheck of Cardozo Law School.¹⁰³ Professor Scheck told the Feerick Committee that one of the expert witnesses on DNA contamination in the Simpson criminal trial received death threats at his laboratory. Professor Scheck said that the television station apparently disclosed the address of the witness’s laboratory, whereas it would have been unusual for a newspaper to have done so.¹⁰⁴

Ultimately, the Feerick Committee reached the same conclusions as the California task force: that televised coverage of trials should be left to the sound discretion of the presiding judge, and that there should be no presumption for or against such coverage.¹⁰⁵ The Committee added in a footnote that New York’s rules contained more safeguards for pre-trial proceedings than the California rule, and recommended that those safeguards be kept in place.¹⁰⁶

The criminal trial of O.J. Simpson in 1995 was one of the most notable trials to be broadcast on television. Millions of Americans nationwide tuned in to cable television coverage of the trial out of the California state courtroom in Los Angeles. In addition to sparking public discourse on matters of racial bias and criminal justice, the case was also credited with having fundamentally changed the media landscape of the United States.¹⁰⁷ Given the level of national interest in the case, Court TV (later rebranded as TruTV) and CNN each aired constant coverage of the proceedings even before livestreaming became mainstream. However, the televised trial provided more than just entertainment value to nationwide consumers — it also informed the public of the use and availability of DNA evidence that could exonerate criminal defendants. After the Simpson trial, more than 300 wrongfully convicted inmates used new DNA evidence to demonstrate their innocence.¹⁰⁸

F. Group 3: Open with More Restrictions

Jurisdictions classified as Open with More Restrictions are those that have more restrictive rules governing audiovisual coverage of courtroom proceedings than the two groups previously discussed. However, unlike Closed jurisdictions, courts in this group tend to allow

¹⁰³ Feerick Report at 62.

¹⁰⁴ *Id.* The Feerick Committee noted in its report that it had “received no information of an incident of this kind in New York.”

¹⁰⁵ *Id.* at xix-xx.

¹⁰⁶ *Id.* at xx.

¹⁰⁷ Babb, Kent, *How the O.J. Simpson murder trial 20 years ago changed the media landscape*, THE WASHINGTON POST (June 9, 2014), available at: https://www.washingtonpost.com/sports/redskins/how-the-oj-simpson-murder-trial-20-years-ago-changed-the-media-landscape/2014/06/09/a6e21df8-eccf-11e3-93d2-ed44be1f5d9e_story.html.

¹⁰⁸ *Id.*

some camera coverage of state court proceedings. Open with More Restrictions jurisdictions are those in which:

1. Audiovisual coverage is not presumed to be allowed, but the court may grant approval.
2. The express consent of the parties or of testifying witnesses is required in some or all cases, or an objection from a party or witness may automatically preclude coverage either of the entire proceeding or of the objecting witness.

In these jurisdictions, there may also be broad limitations on what types of matters or proceedings may be covered, or blanket prohibitions on coverage of certain witnesses or victims (for example, victims in a sexual abuse case or juvenile witnesses in any matter).

In all, ten of the jurisdictions we surveyed were classified as Open with More Restrictions:

- Alabama
- Connecticut
- Illinois
- Kansas
- Maine
- Maryland
- Ohio
- Pennsylvania
- South Dakota
- Texas

During its experimental phase, New York would have fit into this category as well.

In general, eight of the ten jurisdictions categorized as Open with More Restrictions permit audiovisual coverage of both civil and criminal court, while two limit coverage to civil proceedings only. In Connecticut, which permits coverage of both types of proceedings, the rules and procedures vary widely between the two.

In six of the ten jurisdictions, consent of all parties to the litigation is required — for many of these states, this applies to both civil and criminal courts at the trial and appellate levels, while in others the rule many apply only to trial court or only to criminal court. For instance, Maryland requires consent of the parties to permit coverage of a criminal trial, but consent of the parties in a civil matter is not required. Of the remaining states, Maine stands out as the only U.S. jurisdiction that explicitly permits people with “detectable disabilities,” regardless of the nature of their participation in the proceeding, to elect to be excluded from coverage.

Across the board, these jurisdictions generally give deference to objections to coverage raised by parties or witnesses, especially victims of sexual abuse or juvenile or relocated witnesses. Connecticut is the only one of these jurisdictions that permits objections to coverage to be raised by any “interested party” to the matter. Of the states categorized as Open with More

Restrictions, Connecticut has perhaps the most intricate set of rules governing audiovisual coverage, which vary widely between trial- and appellate-level courts and between civil and criminal proceedings.

G. Group 4: Closed

Jurisdictions classified as “closed” are those that have the most-restrictive rules governing audiovisual coverage of courtroom proceedings. Closed jurisdictions are those in which:

- (1) Coverage is prohibited in most or all trial-court proceedings.
- (2) Coverage is permitted in appellate proceedings.

Only three of the jurisdictions we surveyed were classified as closed. One is New York, which currently prohibits audiovisual coverage of proceedings in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, but livestreams appellate-court oral arguments.¹⁰⁹ The second is the District of Columbia, which prohibits all in-courthouse radio or television broadcasting,¹¹⁰ except that oral arguments in the District of Columbia Court of Appeals have been livestreamed via YouTube since the beginning of the COVID-19 pandemic.¹¹¹

The third is Louisiana, whose Code of Judicial Conduct requires judges to “prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions.”¹¹² This language mirrors that of the American Bar Association Code of Judicial Conduct’s former Canon 3A(7), enacted in the wake of the 1935 Bruno Richard Hauptmann trial, discussed *supra*. In 1993, Louisiana assembled a Task Force to Study Cameras in the Trial Courts of Louisiana, comprising judges, defense and plaintiff’s attorneys, prosecutors, and representatives from television, newspaper, and radio. The Task Force presented its findings to the Judicial Council of the Supreme Court of Louisiana and to the Louisiana Supreme Court in 1996, recommending, by a split vote, that the state allow cameras in trial courts.¹¹³

The Louisiana Supreme Court rejected the Task Force’s recommendation, amending the Louisiana Code of Judicial Conduct to allow electronic coverage of appellate proceedings but leaving in place the prohibition on coverage of trial court proceedings.¹¹⁴ That prohibition

¹⁰⁹ See § II.F, *supra*.

¹¹⁰ See D.C. Super. Ct. Civ. R. 201(g), D.C. Super. Ct. Crim. R. 36-I(g); D.C. Fam. Ct. R. N(g).

¹¹¹ See Oral Arguments, District of Columbia Courts, <https://www.dccourts.gov/court-of-appeals/oral-arguments>.

¹¹² Louisiana Code of Judicial Conduct, Canon 3(A)(9).

¹¹³ Paulette H. Holahan, ed., *1996 Annual Report of the Judicial Council of the Louisiana Supreme Court* 8 (1996), available at <https://louisianadigitallibrary.org/islandora/object/lasc-pub%3A2391#page/1/mode/2up>.

¹¹⁴ *Id.*; see also Thornhill Law Firm, *Cameras in the Courtroom, Part I: Louisiana Approach (Introduction)*, La. Ins. Litig. Blog (Mar. 6, 2008), https://www.louisianainsurancelitigation.com/cameras_in_the_courtroom/.

contains only one meaningful exception: under certain circumstances, videos may be taken “for instructional purposes in educational institutions.”¹¹⁵

Louisiana’s prohibition on audiovisual coverage of trial-court proceedings has remained essentially unchanged since 1996. Opponents of reform say that coverage could intimidate potential witnesses and would “lead to a ‘circus’ type atmosphere in which lawyers, defendants, witnesses, or judges tend to ‘play’ to the camera and alter the way they would normally act in court.”¹¹⁶

IV. Policy Considerations

Modern Courts conducted interviews with a variety of relevant stakeholders, including trial lawyers, judges and other judicial representatives, members of the media, and representatives of non-profit organizations. As a result of those interviews and the extensive research (summarized above) concerning the history and track record of in-courtroom camera use in New York and its sister jurisdictions, Modern Courts has developed perspectives on a number of issues bearing on the desirability of audiovisual coverage of trial courtroom proceedings:

A. Government Transparency

American courts at all levels frequently extol the virtues of judicial transparency. *See, e.g., Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 508 (1984) (“The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the acceptance of fairness so essential to public confidence in the system.”); *ABC, Inc. v. Stewart*, 360 F.3d 90, 105 (2d Cir. 2004) (“Our national experience instructs us that except in rare circumstances openness preserves, indeed, is essential to, the realization of [the right to a fair trial] and to public confidence in the administration of justice.”); *Matter of James Q.*, 32 N.Y.3d 671, 676 (2019) (noting New York’s “long-standing, sound public policy that all judicial proceedings, both civil and criminal, are presumptively open to the public”); *see also* Louis Brandeis, *What Publicity Can Do*, *Harper’s Weekly* (Dec. 20, 1913) (“[S]unlight is said to be the best of disinfectants.”).

New York’s executive and legislative branches regularly broadcast footage of their activity. Although it often handles private disputes, the state’s judicial system is, fundamentally, a public institution that is both run by the government and, with few exceptions, open to the public. Section 4 of the Judiciary Law establishes this clearly, requiring generally that “[t]he sittings of every court within this state shall be public, and every citizen may freely attend the same,” though it provides the court with discretion to exclude the public from “all proceedings and trials in cases for divorce, seduction, abortion, rape, assault with intent to commit rape,

¹¹⁵ Louisiana Code of Judicial Conduct, Canon 3(A)(9).

¹¹⁶ Jim Shannon, *WAFB renews battle for cameras in Louisiana courtrooms*, *WAFB 9* (Mar. 31, 2009), <https://www.wafb.com/story/10103719/wafb-renews-battle-for-cameras-in-louisiana-courtrooms/>.

criminal sexual act, bastardy or filiation.”¹¹⁷ As a matter of first principles, New York’s current prohibition on audiovisual coverage of most trial-court proceedings is plainly at odds with the state’s public policy in favor of transparency in government.

One point bears clarification: The choice facing policymakers is not between video broadcasting of court proceedings and total occlusion, but rather between video broadcasting of court proceedings and the existing regime of press and public access to the courts. Indeed, the news media already covers New York State court proceedings, including by publishing (1) the names of parties and other participants, (2) photographs or videos of such individuals, taken outside of the courtroom, (3) artists’ sketches of them, drawn inside the courtroom, (4) interviews of such individuals and people who know them outside of the courtroom, (5) transcriptions of proceedings, and (6) the media’s own characterizations of judicial proceedings.

This focus on the marginal effects of audiovisual coverage motivated the Florida Supreme Court’s instructions for Florida trial court judges evaluating whether to limit camera coverage of a proceeding: “The presiding judge may exclude electronic media coverage of a particular participant only upon a finding that such coverage will have a substantial effect upon the particular individual which would be qualitatively different from the effect on members of the public in general and such effect will be qualitatively different from coverage by other types of media.”¹¹⁸ Regardless of whether this is the appropriate standard for judges to apply in individual circumstances, in light of the fact that courtroom proceedings are already significantly open to the public, including the news media, any evaluation of in-courtroom camera use should apply similar focus on marginal effects.

B. Effect on Court Proceedings and Participants

One area of discussion among both proponents and critics of courtroom coverage alike is the potential effect of audiovisual coverage on the integrity of court proceedings and on the behavior of participants in those proceedings. Due to advances in technology that have made cameras smaller and less obtrusive, as well as more commonplace, the potential for cameras themselves to pose a distraction to court proceedings has decreased substantially, especially with respect to cameras permanently installed in courtrooms. Because cameras have become a common feature of everyday life, it is possible that the effects of media coverage or livestreaming on the conduct of trial participants may be less of a concern than they have been in the past. Nevertheless, audiovisual coverage has the potential to influence the behavior of various trial participants, including judges, lawyers, witnesses and victims, in both positive and negative ways.

1. Judges

The Feerick Committee observed in its report that there was widespread agreement that coverage could have an impact on presiding judges, though “[t]here was disagreement over whether the effect was beneficial or harmful.”¹¹⁹ Today, some argue that media access and fixed

¹¹⁷ N.Y. Jud. § 4.

¹¹⁸ *Post-Newsweek Stations*, 370 So. 2d at 779.

¹¹⁹ Feerick Report at 64.

cameras would increase scrutiny and accountability of trial court judges in a way that could benefit both the public and trial participants. However, others have expressed concern that some judges, especially those who are elected to the bench, might issue a different ruling with cameras present in the courtroom than they would without cameras. What effect this ultimately has on a trial, particularly a criminal trial, may depend on the type of case and the judge's local community. Camera coverage may result in a tendency toward defendant-friendly rulings where there is a perceived strong public concern for a defendant's right to a fair trial. In other cases, and especially at sentencing, judges may make more severe rulings in order to be perceived as tough on crime.¹²⁰

Another common concern is the potential for professional participants in a trial, including both judges and lawyers alike, to "showboat" during a televised or livestreamed trial. This may affect particular rulings or the outcome or fairness of a trial, especially in cases that receive greater media coverage.

2. Lawyers

The conduct of lawyers appearing at trial is raised perhaps even more often than that of judges when it comes to the issue of showboating. Some attorneys have described televised trials as "free advertising."¹²¹ On one hand, some have argued that camera coverage might place attorneys on their best behavior or cause them to come to the courtroom better prepared. On the other, some have noted that the advertising element of televised trials might place the interests of the attorney as a professional in conflict with the interests of their client, especially where decisions are made as to whether to take a plea deal or proceed to trial.¹²²

3. Witnesses

One area of significant concern is the potential effect of audiovisual coverage on witnesses and victims, especially in criminal trials. Some argue that permitting media or fixed-camera coverage of court proceedings could deter victims from coming forward to report crimes, or cause critical witnesses to refuse to testify due to their testimony being widely broadcast and remaining publicly available. As evidenced by the O.J. Simpson trial, televised coverage of courtroom proceedings can have negative effects on witnesses if their personal information is divulged.¹²³ Furthermore, once broadcast by media or livestream, audiovisual coverage of court proceedings would remain publicly available, with little to no ability on the part of the courts to limit access to witness testimony or regulate how recordings are used. While examples of repercussions for witnesses that appear in televised proceedings are likely — and hopefully — rare, it would nevertheless be difficult to eliminate these concerns among prospective witnesses or those who might come forward to report a crime. However, safeguards embedded in a statute or court rule that limit coverage of certain types of witnesses or proceedings in the first instance may help to mitigate these problems.

¹²⁰ *Id.* at 66.

¹²¹ *Id.* at 63.

¹²² *Id.* at 64.

¹²³ *See* Section III.E.1, *supra*; Feerick Report at 62.

Other queries include whether cameras would have an effect on the truthfulness of a witness or their demeanor. The Feerick Committee reported on this concern as well, noting that witnesses may withhold information out of fear of facing either retribution in the criminal justice system or judgment in the public eye.¹²⁴ The Committee also noted that witnesses themselves may play to the camera, a point that is typically raised more often in the context of attorney conduct.¹²⁵

C. Special Considerations Relating to Criminal Defendants

Some have argued that criminal defendants should not be subject to audiovisual coverage; after all, dealing with criminal charge is often one of the worst ordeals in an individual's life, and even an acquittal can result in public shame and embarrassment for the defendant. Viewed from that perspective, increased publicity in the form of a video broadcast is the last thing a criminal defendant might want.¹²⁶

But there are other, potentially beneficial, effects of audiovisual coverage on criminal defendants. First, such audiovisual coverage brings with it increased public scrutiny, which may enhance the integrity of proceedings for the reasons discussed above. And second, a more-public trial that is captured on camera is, for some, an opportunity to clear their name, generate publicity, or further a political agenda.

D. Public Understanding of the Judicial System

It is often observed that allowing audiovisual coverage of courtroom proceedings would enhance the public's understanding of the judicial system.¹²⁷ This is for good reason: it is almost tautological to note that when more members of the public observe courtroom proceedings, the public's understanding of those proceedings and the system within which they operate will improve.

Proponents of in-court camera use often argue that it would enhance the "public understanding and trust [that] is fundamental to our system of justice and our ability to function as lawyers."¹²⁸ This may well be true. A court-provided livestream, in particular, would provide a clear and unedited view of what happens in court. Media broadcasts would provide for significantly increased public understanding as well, albeit through a lens focused primarily on high-profile cases and dramatic moments.

But it is also possible that the public will not like what it sees. If this is the case, a decision to allow audiovisual coverage of courtroom proceedings will nonetheless have been a good one; in a democratic society, it is desirable that the public's preferences are reflected in the

¹²⁴ *Id.* at 55.

¹²⁵ *Id.*

¹²⁶ Defendants, particularly those who were acquitted, may also be concerned about video footage of their trial remaining publicly available in perpetuity via the internet. This concern will require consideration in connection with the rollout of any livestreaming system that also allows viewers to review footage of past proceedings.

¹²⁷ See, e.g., Feerick Report at 70; NYSBA Report at 3, 27; *Petition of Post-Newsweek Stations*, 370 So.2d at 780-81.

¹²⁸ NYSBA Report at 3, 27.

structure of the country's legal system and in its laws, and unearthing public dissatisfaction is desirable, not something to be avoided.

E. Racial Equity

It is hardly controversial to observe that the American judicial system reflects and even magnifies society's many biases, treating (for instance) people of color differently than white people, and men differently than women. Black defendants obtain worse outcomes in court than do similarly situated white defendants, including with respect to bail determinations (25 percent higher for Black defendants, all else being equal)¹²⁹ and sentences (12 percent longer for Black defendants).¹³⁰ Bias can show up in prosecutors' charging decisions, pretrial and trial strategies, and closing arguments; in defense lawyers' case evaluation, client interaction and settlement; and the perceptions and decisions of judges and jurors alike.¹³¹

The public is aware of these disparities: A 2019 study by the Pew Research Center revealed that 87% of Black adults, and 61% of white adults, think that Black people are treated less fairly than white people in the criminal justice system.¹³² But behind the statistics are individual cases, and in New York, the public's only means of watching trial-court proceedings is to show up at the courthouse.

Audiovisual coverage of courtroom proceedings will not necessarily solve all, or perhaps even any, of these problems. But it may alleviate some of them. First, public scrutiny should eliminate most of the worst behavior on the part of trial participants, such as overt racism and sexism.¹³³ Second, recent trials, including *Minnesota v. Chauvin* (relating to the death of George Floyd), *State v. McMichael* (relating to the death of Ahmaud Arbery case), and *State v. Rittenhouse*, have helped advance public awareness of racial issues and public dialogue surrounding them. Over the long term, such awareness and dialogue may result in improvements in the criminal justice system that reduce racial and other inequities. And third, the availability of audiovisual recordings of trials would make it easier for scholars to study racial bias across cases, including, perhaps, by studying more subtle features of trials such as variations in judges' tone of voice in connection with different defendants, and other creative approaches. This, too, could result in improvements in the criminal justice system.

¹²⁹ Ian Ayres & Joel Waldfogel, *A Market Test for Race Discrimination in Bail Setting*, 46 *Stan. L. Rev.* 987, 992 (1994).

¹³⁰ David B. Mustard, *Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from the U.S. Federal Courts*, 44 *J. L. & Econ.* 285, 300 (2001).

¹³¹ *Id.*

¹³² *How to Confront Bias in the Criminal Justice System*, Around the ABA (Dec. 2019), available at <https://www.americanbar.org/news/abanews/publications/youraba/2019/december-2019/how-to-confront-bias-in-the-criminal-justice-system/>.

¹³³ Livestreaming of court proceedings may have a profound mitigating effect on the behavior of judges and attorneys, especially in smaller, local courts where news media coverage of typical matters might be unlikely. In a 2020 report, Special Adviser on Equal Justice in the Courts Jeh Johnson described the results of a 2006 *New York Times* report that had catalogued explicit, racist statements made by Town and Village judges in open court. Jeh Charles Johnson, *Report from the Special Adviser on Equal Justice in the New York State Courts* 31 (Oct. 1, 2020), <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

Historically, the use of cameras in trial courts has generated fears that selective camera coverage by the media of courtroom proceedings could perpetuate and even worsen our society's already deep racial inequities. However, we believe that advances over the past few decades should mitigate such concerns.

Concerns about selective coverage came to the fore in the mid-1990s, in the wake of the widely broadcasted and highly publicized trial of O.J. Simpson. With cameras allowed in courtrooms and the news media having sole discretion to determine what proceedings to cover and, within a given proceeding, what portions to broadcast, many believe that the media's focus was on cases involving Black defendants, and that the media had an interest in sensationalizing those trials, including by portraying defendants and their alleged conduct in a particularly unfavorable way, to increase viewership — with the result of worsening racial stereotyping against Black men in particular.

Always-on (or almost-always-on) court-provided livestreaming, however, does not focus on a particular subset of cases, and within those cases it does not excerpt only inflammatory or misleading snippets. To the contrary, its coverage is unflinching, encompassing all portions of proceedings, except when certain predetermined exceptions apply. Yes, the media will continue to exercise its judgment in deciding what cases merit media coverage; but the media has always been able to do this, even when audiovisual coverage was excluded. And the provision by the court system of streaming video coverage of nearly all courtroom proceedings will serve as a significant counterweight by giving each case equal stature.

F. Remote Proceedings

Over the last few years, as a result of the Covid-19 pandemic and improving technology, a large proportion of “courtroom” proceedings nationwide have taken place remotely, via Zoom, Microsoft Teams, or other, similar platforms. In many instances, a hybrid approach has been used, in which the judge is in the courtroom and the litigants and their counsel are at their respective homes or offices. We would be remiss in not pointing out that, thanks to this development, even in New York courts, the floodgates are already open, and cameras have flowed into the state's courtrooms. Other states, such as Michigan, have gone further, incorporating in-court cameras into their remote-court platforms, seamlessly integrating remote-court technology with their livestreaming systems.¹³⁴

V. Conclusion

New York is an outlier on the national scene; whereas almost every other state allows at least some audiovisual media coverage of trials and other trial court proceedings, New York does not. Nor does New York livestream trial court proceedings.

The state's judicial system and its citizens would benefit from a modernization program bringing the courts into the twenty-first century. Accordingly, Modern Courts supports the repeal

¹³⁴ See § III.D.2, *supra*.

of Section 52 and the incorporation into new legislation of the following broad principles concerning in-courtroom video camera use:

- Modern Courts is broadly supportive of in-courtroom camera use. The general public should be permitted and empowered to view trial-court proceedings — including witness testimony — remotely, both via court-provided livestreaming over the internet and enhanced, presumptive access to the courts by members of the audiovisual news media. In short, it is time to repeal the current effective ban on audiovisual coverage of trial proceedings embodied in N.Y. Civil Rights Law section 52.
- Appropriate limits should be placed on the use of cameras in the courts. For instance, there should be a presumption that audiovisual coverage of certain types of proceedings, such as closed proceedings, and certain types of witnesses, such as minors, will not be permitted.
- Trial court judges should be afforded a meaningful degree of control over in-court camera use, and should have discretion to restrict or prohibit camera use where doing so serves the interests of justice.

Legislation consistent with these principles would promote judicial transparency, equal treatment under the law, and public understanding of the judicial process, without unduly burdening the due process rights of litigants or detracting from the dignity of the judicial process.