

JUDICIAL CONFERENCE OF THE UNITED STATES

**STATEMENT OF
THE HONORABLE JOHN R. TUNHEIM**

**JUDGE, UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**



**FOR THE
COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING ON CAMERAS IN THE COURTROOM:
THE "SUNSHINE IN THE COURTROOM ACT OF 2007," H.R. 2128**

September 27, 2007

Administrative Office of the U.S. Courts, Office of Legislative Affairs
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**SUMMARY OF STATEMENT OF JUDGE TUNHEIM
ON BEHALF OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
September 27, 2007**

The Judicial Conference of the United States strongly opposes H.R. 2128 to the extent that it allows the use of cameras in the federal trial courts. The Conference also opposes the bill's provisions permitting each appellate panel to decide whether to allow cameras, believing instead that the existing Conference policy – which requires that decision to be made by the entire court of appeals – is appropriate.

This opposition is not based on a knee-jerk reaction against increased publicity for the federal courts. In fact, the Federal Judiciary is arguably one of the most publicly accessible government institutions. Nearly every hearing, trial, appellate argument, filing, decision, and opinion is open and available to the public. And, over the past decade, the Judicial Conference has dramatically expanded that openness by making its entire filing system electronically available to the public through the Internet. This major initiative has put the Judiciary at the forefront of public access.

The Judicial Conference position is based on a thoughtful and reasoned concern regarding the impact cameras could have on trial proceedings. This legislation has the potential to undermine the fundamental right of citizens to a fair trial. It could jeopardize court security and the safety of trial participants, including judges, U.S. attorneys, trial counsel, U.S. marshals, court reporters, and courtroom deputies. The use of cameras in the trial courts could also raise privacy concerns and produce intimidating effects on litigants, witnesses, and jurors, many of whom have no direct connection to the proceeding. In addition, appearing on television could lead some trial participants to act more dramatically, to pontificate about their personal views, to promote commercial interests to a national audience, or to increase their courtroom actions so as to lengthen their appearance on camera. Finally, camera coverage could become a negotiating tactic in pretrial settlement discussions or cause parties to choose not to exercise their right to have a trial.

Unlike congressional hearings or sessions, a courtroom trial takes place to determine individuals' rights and to administer justice. Private livelihoods, property, and even personal liberty and human life itself are among the crucial matters at stake. The right to have these matters decided in a fair and impartial trial sets the court proceedings apart from the oft-televised legislative, administrative, or ceremonial proceedings.

The paramount question in determining whether cameras should be used in federal courts should not be whether more openness would be enjoyed by the public and media. Virtually all court proceedings are public and open today with very limited exceptions (such as of those related to juveniles). Rather, the Judicial Conference believes the question is whether the presence of cameras has the potential to deprive citizens of their ability to have a claim or right fairly resolved in United States district courts. Although

the legislation gives the presiding judge the discretion to deny the use of cameras, the potential for compromising a citizen's right to a fair trial may not become evident until a televised trial is underway. Therefore, the Conference has taken the position that any perceived benefit from allowing cameras is outweighed by the potential for harm to an individual involved in the litigation process.

Because cameras in the trial courts could profoundly and negatively impact the trial process, the Judicial Conference strongly opposes any legislation that would allow the use of cameras in the United States district courts.

**STATEMENT OF JUDGE JOHN R. TUNHEIM
ON BEHALF OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
September 27, 2007**

Mr. Chairman and Members of the Committee, my name is John R. Tunheim. I am a United States District Judge in the District of Minnesota and Chair of the Court Administration and Case Management Committee of the Judicial Conference. I have been asked to testify today on behalf of the Judicial Conference regarding the issue of cameras in the courtroom and the pending legislation, H.R. 2128, the "Sunshine in the Courtroom Act of 2007." As a preliminary point, I want to emphasize that the Judicial Conference does not speak for the Supreme Court regarding the bill's application to that Court.

The Judicial Conference strongly opposes H.R. 2128 to the extent that it allows the use of cameras in the federal trial courts. The Conference also opposes the bill's provisions allowing the use of cameras by any panel in all courts of appeals, rather than allowing that decision to be made by each court of appeals as a whole, which is the present practice.

I. Background

The Federal Judiciary has reviewed the issue of whether cameras should be permitted in the federal courts for more than six decades, both in case law and through Judicial Conference consideration. The Judicial Conference, in its role as the policy-making body for the Federal Judiciary, has consistently expressed the view that camera coverage can do irreparable harm to a citizen's right to a fair and impartial trial. The Conference believes that the intimidating effect of cameras on litigants, witnesses, and

jurors has a profoundly negative impact on the trial process. In both civil and criminal cases, cameras can intimidate defendants who, regardless of the merits of the case, might prefer to settle or plead guilty rather than risk damaging accusations in a televised trial. Cameras can also create security and privacy concerns for many individuals, many of whom are not even parties to the case, but about whom very personal information may be revealed at trial.

These concerns are far from hypothetical. Since the infancy of motion pictures, cameras have had the potential to create a spectacle around trial court proceedings. Examples include the media frenzies that surrounded the 1935 Lindbergh baby kidnaping trial, the murder trial in 1954 of Dr. Sam Sheppard, the Menendez brothers and O.J. Simpson trials, as well as the more recent hearings relating to the death of Anna Nicole Smith. We have avoided such incidences in the federal courts due to the long-standing bar of cameras in the trial courts, which H.R. 2128 now proposes to overturn.

I want to emphasize that our opposition to this legislation is not based on a knee-jerk reaction against new technologies. In fact, the federal courts have shown strong leadership in the continuing effort to modernize the litigation process. This has been particularly true of the Judiciary's willingness to embrace new technologies, such as electronic case filing and access to court files, videoconferencing, and electronic evidence presentation systems. Indeed, some courts, such as the district court here in the District of Columbia, have set up special media rooms for high visibility trials, allowing reporters to provide continual and contemporaneous reports on the conduct of a trial to the public. In

addition, many of the appellate courts provide recordings of oral arguments on their web sites. And this policy to promote openness in the courtroom continues. For example, earlier this year, on the recommendation of the Committee that I chair, the Judicial Conference approved a pilot program to make digital audio recordings of proceedings in district and bankruptcy courts in which the official record is taken using digital recording devices available on the Internet. Our opposition to this legislation, therefore, is not, as some may suggest, based on a desire to stem technology or access to the courts. Rather, the Judicial Conference opposes the broadcasting of federal trial court proceedings because it believes it to be contrary to the interests of justice, which it is our most basic duty to uphold.

Today I will discuss some of the Judicial Conference's specific concerns with this legislation, as well as with the issues of cameras in the trial courtroom, generally. Before addressing those concerns, however, I would like to provide you with a brief history of the Conference's consideration of the cameras issue, which will demonstrate the time and effort it has devoted to understanding this issue over the years.

II. Background on Cameras in the Federal Courts

Whether to allow cameras in the courtroom is far from a novel question for the Federal Judiciary. Electronic media coverage of criminal proceedings in federal courts has been expressly prohibited under Federal Rule of Criminal Procedure 53 since the criminal rules were adopted in 1946. That rule states that "the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of

judicial proceedings from the courtroom.” And, in 1972, the Judicial Conference adopted a prohibition against “broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto. . . .” The prohibition applied to both criminal and civil cases.

Since then, the Conference has, however, repeatedly studied and considered the issue. In 1988, Chief Justice Rehnquist appointed an Ad Hoc Committee on Cameras in the Courtroom, which recommended that a three-year experiment be established permitting camera coverage of certain proceedings in selected federal courts. In 1990, the Judicial Conference adopted this recommendation and authorized a three-year pilot program allowing electronic media coverage of civil proceedings in six district and two appellate courts, which commenced July 1, 1991.¹

The Federal Judicial Center (FJC) conducted a study of the pilot project and submitted its results to a committee of the Judicial Conference. After reviewing the FJC’s report, the Conference decided in September 1994 that the potentially intimidating effect of cameras on some witnesses and jurors was cause for considerable concern in that it could impinge on a citizen’s right to a fair and impartial trial. Therefore, the Conference concluded that it was not in the interest of justice to permit cameras in federal trial courts.

Two years later, at its March 1996 session, the Judicial Conference again considered the issue and urged each circuit judicial council to adopt, pursuant to its

¹The courts that volunteered to participate in the pilot project were the U.S. Courts of Appeals for the Second and Ninth Circuits, and the U.S. District Courts for the Southern District of Indiana, District of Massachusetts, Eastern District of Michigan, Southern District of New York, Eastern District of Pennsylvania, and Western District of New York.

rulemaking authority set forth in 28 U.S.C. § 332(d)(1), an order reflecting the Conference's September 1994 decision not to permit the taking of photographs or radio and television coverage of proceedings in U.S. district courts. The Conference also voted strongly to urge circuit judicial councils to abrogate any local rules that conflict with this decision, pursuant to 28 U.S.C. § 2071(c)(1).

Interestingly, however, the Conference distinguished between camera coverage for appellate and district court proceedings. Because an appellate proceeding does not involve witnesses and juries, the concerns of the Conference regarding the impact of camera coverage on the litigation process were reduced. Therefore, the Conference in 1996 "agreed to authorize each court of appeals to decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt."

The current policy, as published by the Administrative Office of the U.S. Courts in the *Guide to Judiciary Policies and Procedures*, states:

A judge may authorize broadcasting, televising, recording, or taking photographs in the courtroom and in adjacent areas during investitive, naturalization, or other ceremonial proceedings. A judge may authorize such activities in the courtroom or adjacent areas during other proceedings, or recesses between such other proceedings, only:

- (a) for the presentation of evidence;
- (b) for the perpetuation of the record of the proceedings;
- (c) for security purposes;
- (d) for other purposes of judicial administration; or

(e) for the photographing, recording, or broadcasting of appellate arguments.

When broadcasting, televising, recording, or photographing in the courtroom or adjacent areas is permitted, a judge should ensure that it is done in a manner that will be consistent with the rights of the parties, will not unduly distract participants in the proceeding, and will not otherwise interfere with the administration of justice.

Guide, Vol. 1, Ch. 3, Part E. 3.

Presently, two of the 13 appellate courts, the Second and Ninth Circuits, have decided to permit camera coverage in appellate proceedings. This decision was made by the judges of each court. As for cameras in district courts, most circuit councils have either adopted resolutions prohibiting cameras in the district courts or have acknowledged that the district courts in that circuit already have such a prohibition.

Finally, it may be helpful to describe the state rules regarding cameras in the courtroom. While it is true that most states permit some use of cameras in their courts, such access by the media is not unlimited. The majority of states have imposed restrictions on the use of cameras in the court or have banned cameras altogether in certain proceedings. Although it is somewhat difficult to obtain current information, it appears that approximately 31 states that permit cameras have restrictions of some kind written into their authorizing statutes, such as allowing coverage only in certain courts, prohibiting coverage of certain types of proceedings or of certain witnesses, and/or requiring the consent of the parties, victims of sex offenses, and witnesses. Thirteen states, including the District of Columbia, do not allow coverage of criminal trials. In

nine states, cameras are allowed only in appellate courts. The District of Columbia prohibits cameras altogether. Utah allows only still photography at civil trials. In fact, only 19 states appear to provide the presiding judge with the type of broad discretion over the use of cameras contained in this legislation. It is clear from the widely varying approaches to the use of cameras that the state courts are far from being of one mind in the approach to, or on the propriety and extent of, the use of cameras in the courtroom.

III. Judicial Conference Concerns Regarding H.R. 2128, As Applied to Trial Courts

I would now like to discuss some of the specific concerns the Judicial Conference has with H.R. 2128, as well as the more general issue of media coverage in trial courtrooms.

A. Cameras Have the Potential to Negatively Impact the Trial Process

Supporters of cameras in the courtroom assert that modern technology has made cameras and microphones much less obvious, intrusive or disruptive, and that therefore the Judiciary need not be concerned about their presence during proceedings. The Conference respectfully argues that this is not the paramount concern. While covert coverage may reduce the bright lights and tangle of wires that were made famous in the Simpson trial, it does nothing to reduce the significant and measurable negative impact that camera coverage can have on the trial participants themselves.

Proponents of cameras in the courtroom also argue that media coverage would benefit society because it would enable people to become more educated about the legal system and particular trials. The Judiciary strongly endorses educational outreach but

believes it could better be achieved through increased and targeted community outreach programs. The Judicial Conference also believes, however, that this increased public education should not interfere with the Judiciary's primary mission, which is to administer fair and impartial justice to individual litigants in individual cases.

While judges are accustomed to balancing conflicting interests, weighing any potential "positive" effects of cameras against the degree of harm that this type of coverage could have on a particular proceeding would be difficult, if not impossible. This includes the impact the camera and its attendant audience would have on the attorneys, jurors, witnesses, and even judges. For example, a witness telling facts to a jury will often act differently if he or she is aware that a television audience is watching and listening. Media coverage could exacerbate any number of human emotions in a witness from bravado and over-dramatization, to self-consciousness and under-reaction. These changes in a witness's demeanor could have a profound impact on a jury's ability to accurately assess the veracity of that witness. In fact, according to the FJC study (which is discussed in more detail later in this statement), 64 percent of the participating judges reported that, at least to some extent, cameras make witnesses more nervous. In addition, 46 percent of the judges believed that, at least to some extent, cameras make witnesses less willing to appear in court, and 41 percent found that, at least to some extent, cameras distract witnesses. Such effects could severely compromise the ability of jurors to assess the veracity of a witness and, in turn, could prevent the court from being able to ensure that the trial is fair and impartial.

B. H.R. 2128 Inadequately Protects the Right to a Fair Trial

The primary goal of this legislation is to allow radio and television coverage of federal court cases. While there are several provisions aimed at limiting coverage (*i.e.*, allowing judges the discretion to allow or decline media coverage, authorizing the Judicial Conference to develop advisory guidelines regarding media coverage, requiring courts to disguise the face and voice of a witness upon his or her request, and barring the televising of jurors), the Conference is convinced that camera coverage could, in certain cases, so indelibly affect the dynamics of the trial process that it would impair a citizen's ability to receive a fair trial.

For example, Section 2(b)(1) and 2(b)(2) of the bill would allow the presiding judge to decide whether to allow cameras in a particular proceeding before that court. If this legislation were enacted, I am sure that all federal judges would use extreme care and judgment in making this determination. Nonetheless, we are not clairvoyants. Even the most straightforward, "run of the mill" cases have unforeseen developments. Obviously a judge never knows how a lawyer will proceed or how a witness or party will testify. And these events can have a tremendous impact on the trial participants. Currently, courts have recourse to instruct the jury to disregard certain testimony or, in extreme situations, to declare a mistrial if the trial process is irreparably harmed. If camera coverage is allowed, however, witnesses or litigants may be tempted to speak to the larger television audience, and there is no opportunity to rescind these remarks. This concern is of such importance to the Conference that it opposes legislation that would give a judge

discretion to evaluate in advance whether television cameras should be permitted in particular cases.

The Judicial Conference is also concerned about the impact of the legislation on witnesses. Although the bill provides witnesses with the right to request that their faces and voices may be obscured, anyone who has been in court knows how defensive witnesses can be. Frequently, they have a right to be. Witnesses are summoned into court to be examined in public. Sometimes they are embarrassed or even humiliated. Providing them the choice of whether to testify in the open or blur their image and voice would be cold comfort given the fact that their name and their testimony will be broadcast to the community. It would not be in the interest of the administration of justice to unnecessarily increase the already existing pressures on witnesses.

These basic concerns regarding witnesses were eloquently described by Justice Clark in *Estes v. Texas*, 381 U.S. 532 (which I discuss more fully at the end of my statement):

The quality of the testimony in criminal trials will often be impaired. The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to overstatement; memories may falter, as with anyone speaking publicly, and accuracy of statement may be severely undermined. Embarrassment may impede the search for the truth, as may a natural tendency toward overdramatization. Furthermore, inquisitive strangers and “cranks” might approach witnesses on the street with jibes, advice or demands for explanation of testimony. There is little wonder that the defendant cannot “prove” the existence of such factors. Yet we all know from experience that they exist.

Estes, 381 U.S. at 547. It is exactly these concerns that cause the Judicial Conference of

the United States to oppose enactment of H.R. 2128.

C. Threat of Camera Coverage Could be Used as a Trial Tactic

Cameras can provide a strong temptation for both attorneys and witnesses to state their cases in the court of public opinion rather than in a court of law. Therefore, allowing camera coverage would almost certainly become a potent negotiating tactic in pretrial settlement negotiations. For example, in a high-stakes case involving millions of dollars, the simple threat that the president of a defendant corporation could be forced to testify and be cross-examined, for the edification of the general public, might well be a real disincentive to the corporation in exercising its right to a public trial.

D. Cameras Can Create Security Concerns

Although the bill includes language allowing a witness to request that his or her image be obscured, the bill does not address security concerns or make similar provision regarding other participants in judicial proceedings. The presence of cameras in the trial courtroom is likely to heighten the level and the potential of threats to judges. The number of threats against judges has escalated over the years, and widespread media exposure could exacerbate the problem. Witnesses, jurors, and United States Marshals Service personnel might also be put at risk with this increased exposure and notoriety.

Finally, national and international camera coverage of trials, especially those relating to terrorism, could place federal courthouses and their occupants at greater risk and may require increased personnel and funding to adequately protect participants in such court proceedings.

E. Cameras Can Create Serious Privacy Concerns

There is a rising tide of concern among Americans regarding privacy rights and the Internet. Numerous bills have been introduced in both the Congress and state legislatures to protect the rights of individual citizens from the indiscriminate dissemination of personal information that once was, to use a phrase coined by the Supreme Court, hidden by “practical obscurity,”² but now is available to anyone at any time because of the advances of technology.

The Judiciary takes these concerns very seriously. In fact, the Committee that I chair, the Court Administration and Case Management Committee, has spent the last eight years ensuring that the Judiciary’s electronic case files system provides adequate privacy safeguards to protect sensitive and personal information, such as Social Security numbers, financial account numbers, and the names of minor children from the general public, while at the same time providing the public with access to court files.

Broadcasting of trials presents many of the same concerns about privacy as does the indiscriminate dissemination of information on the Internet that was once only available at the courthouse. Witnesses and counsel frequently discuss very sensitive information during the course of a trial. Often this information relates to individuals who are not even parties to the case but about whom personal information may be revealed. The reality is that many of the trials the media would be interested in televising are those

²United States Department of Justice v. Reporters Committee for the Freedom of the Press, 489 U.S. 749, 764 (1989).

that involve testimony of an extremely private nature, revealing family relationships and personal facts, including medical and financial information. While this type of information is presented in open court, televising these matters could sensationalize and provide these details to a much larger audience, which again raises significant and legitimate privacy concerns.

Involvement in a federal case can have a deep and long-lasting impact on all its participants – parties to the case as well as witnesses – most of whom have neither asked for nor sought publicity. In this adversarial setting, reputations can be compromised and relationships can be damaged. In fact, according to the FJC study on live courtroom media coverage, 56% of the participating judges felt that electronic media coverage violates a witness’s privacy. This is not to say that the Conference advocates closed trials; far from it. Nevertheless, there is a common-sense distinction between a public trial in a public courtroom – typically filled with individuals with a substantive interest in the case – and its elevation to an event that involves the wider television audience.

The issue of privacy rights is one that has not been adequately considered or addressed by those who would advocate the broadcasting of trials. This heightened awareness of and concern for privacy rights is a relatively new and important development that further supports the position of the Judicial Conference to prohibit the use of cameras in the courtroom.

F. H.R. 2128 Does Not Address the Complexities Associated with Camera Coverage in the Trial Courts

Televised coverage of a trial would have a significant impact on that trial process. Major policy implications as well as administration issues may arise, many of which are not addressed in the proposed legislation. For example, televising a trial makes certain court orders, such as the sequestration of witnesses, more difficult to enforce and could lead to tainted testimony from witnesses. In addition, more technical issues would have to be addressed, including advance notice to the media and trial participants, limitations on coverage and camera control, coverage of the jury box, and sound and light criteria.

Finally, I should note that H.R. 2128 includes no funding authorization for its implementation, and there is no guarantee that such funds would be appropriated. The costs associated with allowing cameras, however, could be significant, such as retrofitting courtrooms to incorporate cameras while minimizing their actual presence to the trial participants. Also, to ensure that a judge's orders regarding coverage of the trial were followed explicitly (*e.g.*, not filming the jury, obscuring the image and voice of certain witnesses, or blocking certain testimony), a court may need to purchase its own equipment, as well as hire technicians to operate it. Large courts might also feel compelled to create the position of media coordinator or court administrative liaison to administer and oversee an electronic media program on a day-to-day basis. Such liaison's duties might include receiving applications from the media and forwarding them to presiding judges, coordinating logistical arrangements with the media, and maintaining

administrative records of media coverage. Thus, the cost of this legislation could be significant.

G. There is No Constitutional Right to have Cameras in the Courtroom

Some have asserted that there is a constitutional “right” to bring cameras into the courtroom and that the First Amendment requires that court proceedings be open in this manner to the news media. The Judicial Conference responds to such assertions by stating that today, as in the past, federal court proceedings *are* open to the public; however, nothing in the First Amendment *requires* televised trials.

The seminal case on this issue is *Estes v. Texas*, 381 U.S. 532 (1965). In *Estes*, the Supreme Court directly faced the question of whether a defendant was deprived of his right under the Fourteenth Amendment to due process by the televising and broadcasting of his trial. The Court held that such broadcasting in that case violated the defendant’s right to due process of law. At the same time, a majority of the Court’s members addressed the media’s right to telecast as relevant to determining whether due process required, in general, excluding cameras from the courtroom. Justice Clark’s plurality opinion and Justice Harlan’s concurrence indicated that the First Amendment did not extend the right to the news media to televise from the courtroom. Similarly, Chief Justice Warren’s concurrence, joined by Justices Douglas and Goldberg, stated:

[n]or does the exclusion of television cameras from the courtroom in any way impinge upon the freedoms of speech and the press. . . . So long as the television industry, like the other communications media, is free to send representatives to trials and to report on those trials to its viewers, there is no abridgement of the freedom of press.

Estes, 381 U.S. at 584-85 (Warren, C.J., concurring).

In the case of *Westmoreland v. Columbia Broadcasting System Inc.*, 752 F.2d 16 (2d Cir. 1984), the Second Circuit was called upon to consider whether a cable news network had a right to televise a federal civil trial and whether the public had a right to view that trial. In that case, both parties had consented to the presence of television cameras in the courtroom under the close supervision of a willing court, but a facially applicable court rule prohibited the presence of such cameras. The Second Circuit denied the attempt to televise that trial, saying that no case has held that the public has a right to televised trials. As stated by the court, “[t]here is a long leap. . . between a public right under the First Amendment to attend trials and a public right under the First Amendment to see a given trial televised. It is a leap that is not supported by history.” *Westmoreland*, 752 F.2d at 23.

Similarly, in *United States v. Edwards*, 785 F.2d 1293 (5th Cir. 1986), the court discussed whether the First Amendment encompasses a right to cameras in the courtroom, stating: “No case suggests that this right of access includes a right to televise, record, or otherwise broadcast trials. To the contrary, the Supreme Court has indicated that the First Amendment does not guarantee a positive right to televise or broadcast criminal trials.” *Edwards*, 785 F.2d at 1295. The court went on to explain that while television coverage may not always be constitutionally prohibited, that is a far cry from suggesting that television coverage is ever constitutionally mandated.

These cases forcefully make the point that, while all trials are public, there is no

constitutional right of media to broadcast federal district court or appellate court proceedings.

H. The Teachings of the FJC Study

Proponents of cameras legislation have previously indicated that the legislation is justified in part by the FJC study referred to earlier. The results of that study, however, were part of the basis for the Judicial Conference's opposition to cameras in the courtroom. Given this apparent inconsistency, it may be useful to highlight several important findings and limitations of the study. (I should also note that the recommendations included in the FJC report were proposed by its research project staff, but were not reviewed by its Board.)

First, the study only pertained to civil cases. This legislation, if enacted, would allow camera coverage in both civil and criminal cases. One could expect that most of the media requests for coverage would be in sensational criminal cases, where the problems for witnesses, including victims of crimes, and jurors are most acute.

Second, the Conference believes that the study's conclusions downplay a large amount of significant negative statistical data. For example, the study reports on attorney ratings of electronic media effects in proceedings in which they were involved. Among these negative statistics were the following:

- 32% of the attorneys who responded felt that, at least to some extent, the cameras distract witnesses;
- 40% felt that, at least to some extent, the cameras make witnesses more nervous than they otherwise would be;

- 19% believed that, at least to some extent, the cameras distract jurors;
- 21% believed that, at least to some extent, the cameras cause attorneys to be more theatrical in their presentations;
- 27% believed that, at least to some extent, the cameras have the effect of distracting the attorneys; and
- 21% believed that, at least to some extent, the cameras disrupt the courtroom proceedings.

When trial judges were asked these same questions, the percentages of negative responses were even higher:

- 46% believed that, at least to some extent, the cameras make witnesses less willing to appear in court;
- 41% found that, at least to some extent, the cameras distract witnesses;
- 64% reported that, at least to some extent, the cameras make witnesses more nervous than they otherwise would be;
- 17% responded that, at least to some extent, cameras prompt people who see the coverage to try to influence juror-friends;
- 64% found that, at least to some extent, the cameras cause attorneys to be more theatrical in their presentations;
- 9% reported that, at least to some extent, the cameras cause judges to avoid unpopular decisions or positions; and
- 17% found that, at least to some extent, cameras disrupt courtroom proceedings.

For the appellate courts, an even larger percentage of judges who participated in the study related negative responses:

- 47% of the appellate judges who responded found that, at least to some extent, the cameras cause attorneys to be more theatrical in their presentations;

- 56% found that, at least to some extent, the cameras cause attorneys to change the emphasis or content of their oral arguments;
- 34% reported that, at least to some extent, cameras cause judges to change the emphasis or content of their questions at oral arguments; and
- 26% reported that, at least to some extent, the cameras disrupt courtroom proceedings.

These negative statistical responses from judges and attorneys involved in the pilot project dominated the Judicial Conference debate and were highly influential in the Conference's conclusion that the intimidating effect of cameras on witnesses and jurors was cause for alarm. Since a United States judge's paramount responsibility is to seek to ensure that all citizens enjoy a fair and impartial trial, and since cameras may compromise that right, allowing cameras would not be in the interest of justice. For these reasons, the Judicial Conference rejected the conclusions made by the FJC study with respect to cameras in district courts.

IV. Conclusion

When one thinks of cameras in the trial courtroom today, the O.J. Simpson case inevitably comes to mind and how the presence of cameras in that courtroom impacted the conduct of the attorneys, witnesses, jurors, and the judge. Admittedly, few cases will have this notoriety, but the inherent effects of the presence of cameras in the courtroom are, in some respects, the same, whether or not it is a high-publicity case. Furthermore, there is a legitimate concern that if the federal courts were to allow camera coverage of cases that are not sensational, it would become increasingly difficult to limit coverage in

the high-profile and high-publicity cases where such limitation, almost all would agree, would be warranted.

This is not a debate about whether judges would have personal concerns regarding camera coverage. Nor is it a debate about whether the federal courts are afraid of public scrutiny or about increasing the educational opportunities for the public to learn about the federal courts or the litigation process. Open hearings are a hallmark of the Federal Judiciary.

Rather, this is a question about how individual Americans – whether they are plaintiffs, defendants, witnesses, or jurors – are treated by the federal judicial process. It is the fundamental duty of the Federal Judiciary to ensure that every citizen receives his or her constitutionally guaranteed right to a fair trial. For the reasons discussed in this statement, the Judicial Conference believes that the use of cameras in the trial courtroom would seriously jeopardize that right. It is this concern that causes the Judicial Conference of the United States to oppose enactment of H.R. 2128 as applied to federal trial courts. As the Supreme Court stated in *Estes*, “[w]e have always held that the atmosphere essential to the preservation of a fair trial – the most fundamental of all freedoms – must be maintained at all costs.” 381 U.S. at 540.