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January 6, 2010

Mr. James C. Duff
Conference Secretary
Judicial Conference of the United States
Administrative Office of the U.S. Courts
One Columbus Circle, NE
Washington, D.C. 20544

Dear Jim,

It has come to my attention that the U.S. District Court for the Northern District of California intends to televise a civil trial, *Perry v. Schwarzenegger*, starting on January 11, 2010. I am greatly concerned about this development and urge the Judicial Conference to forestall the implementation of a hastily-revised Local Rule that clearly deviates from longstanding Conference and congressional policy prohibiting televised trial proceedings.

On December 22, 2009, the court attempted to revise the Local Rule (77-3) that proscribes the televising of judicial proceedings, but failed to provide adequate notice and an opportunity for public comment. He corrected his error by issuing notice for public comment on December 31. The comment period ends on Friday, January 8, 2010, meaning that respondents have only five business days to critique or comment on the proposed change, despite the fact that the issue has occupied a significant amount of the judiciary's and Congress' time in past years and generated lots of commentary. It appears the court orchestrated the timing of the revision to allow the televising of *Perry*, a high-profile trial, which is scheduled to begin the following Monday.

Whatever the merits of televising oral arguments before the Courts of Appeals or the Supreme Court, the televising of trial proceedings is different. Following its own exhaustive review of the subject matter, the Judicial Conference has consistently stated since 1994 that the presence of cameras at trial can have a palpable, intimidating effect on jurors and witnesses. Congress has flirted with reversing this prohibition through the years, but has chosen not to act.

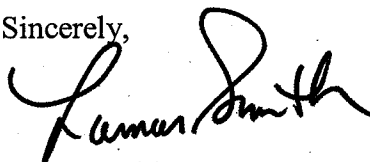
Mr. James C. Duff
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In light of this history, it's inappropriate for one U.S. District Judge to overturn Conference and congressional policy by amending a Local Rule and giving only five days for a comment period. The televising of a civil trial has the potential to change the dynamics – even the outcome – of the proceeding in a way that may disadvantage or, in some cases, endanger litigants and other participants. We should not revise current practice in the absence of greater deliberation by the Judiciary and the Congress. The issue of televising trials something we need to continue to work on together to produce a consensus result that is fair to litigants, jurors, and witnesses.

The trial is less than a week away. I urge the Judicial Conference to do everything in its power to intervene with the Northern District of California to prevent the amending of the Local Rule and the televising of *Perry v. Schwarzenegger*.

Thank you for your attention to this important and time-sensitive issue. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Lamar Smith". The signature is fluid and cursive, with the first name "Lamar" being more prominent than the last name "Smith".

Lamar Smith
Ranking Member
Judiciary Committee

cc: The Honorable John G. Roberts, Chief Justice of the United States,
presiding officer, Judicial Conference of the United States

The Honorable Vaughn R. Walker, Chief Judge of the U.S. District Court for
the Northern District of California

The Honorable Alex Kozinski, Chief Judge of the U.S. Court of Appeals for the
Ninth Circuit