

STATEMENT OF JUDGE DIARMUID O'SCANNLAIN
ON BEHALF OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES REGARDING
S. 829 AS APPLIED TO FEDERAL TRIAL COURTS

Introduction

The Judicial Conference strongly opposes S. 829, a bill that would “allow media coverage of court proceedings,” so far as it applies to the federal trial courts. Of course, the Judicial Conference cannot and does not speak for the Supreme Court.

The federal judiciary has examined the issue of whether cameras should be permitted in the federal courts for more than six decades, both through case law and 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. On the other hand, since 1994 the Judicial Conference has permitted “the photographing, recording, or broadcasting of appellate arguments” in the Circuit Courts of Appeals. But, as to the trial courts, we believe that the intimidating effect of cameras on litigants, witnesses, and jurors has a profoundly

negative impact on the trial process. Moreover, in civil cases cameras can intimidate civil defendants who, regardless of the merits of their case, might prefer to settle rather than risk damaging accusations in a televised trial. Cameras can also create security concerns in the federal courts. Finally, cameras can create privacy concerns for countless numbers of persons, 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. Obvious examples include the media frenzies that surrounded the 1935 Lindbergh baby kidnapping trial, the murder trial in 1954 of Dr. Sam Sheppard, and the more recent Menendez brothers and O.J. Simpson trials. We have avoided such incidences in the federal courts due to the present bar of cameras in the trial courts, which S. 829 now proposes to overturn.

The federal courts have shown strong leadership in the continuing effort to modernize the litigation process. This has been particularly true of the federal judiciary's willingness to embrace new technologies, such as electronic case filing and access, videoconferencing, and electronic evidence presentation systems. The federal courts have also established community outreach programs in which

several thousand students and teachers nationwide have come to federal courthouses to learn about court proceedings. Our opposition to this legislation, therefore, is not, as some may suggest, borne of a desire to stem technology or access to the courts. We oppose the broadcasting of federal trial court proceedings because it is contrary to the interests of justice, which it is our most solemn 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. However, before addressing those concerns, I would like to provide you with a brief review of the Conference's experience with cameras, which will demonstrate the time and effort it has devoted to understanding this issue over the years. I must emphasize at the threshold that today, as in the past, the federal courts, both appellate and trial, are at all times open to the public.

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 “[t]he taking of photographs in the courtroom during the progress of judicial

proceedings or radio broadcasting of judicial proceedings from the courtroom shall not be permitted by the court.”

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 criminal and civil cases. The Conference has, however, repeatedly studied and considered the issue since then.

In 1988, Chief Justice William 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. The 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.

The Federal Judicial Center (FJC) conducted a study of the pilot project and

submitted its results to a committee of the Judicial Conference in September 1994.¹ The research project staff made a recommendation that the Conference “authorize federal courts of appeals and district courts nationwide to provide camera access to civil proceedings in their courtrooms. . . .” It is important to note that the recommendations included in the report were reviewed within the FJC but not by its Board.

The Conference disagreed with the conclusions drawn by the FJC staff and concluded that the potentially intimidating effect of cameras on some witnesses and jurors was cause for considerable concern. The paramount responsibility of a United States judge is to uphold the Constitution, which guarantees citizens the right to a fair and impartial trial. Taking into account this considerable responsibility placed upon judges, the Conference concluded that it was not in the interest of justice to permit cameras in federal courtrooms.

Two years later, at its March 1996 session, the Judicial Conference again considered the issue. At that session, the Conference voted strongly to urge each circuit judicial council to adopt, pursuant to its rulemaking authority articulated in 28 U.S.C. § 332(d)(1), an order reflecting the Conference’s September 1994

¹In 1994, the Federal Judicial Center published a report entitled *Electronic Media Coverage of Federal Civil Proceedings: An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeals*. The period used by the Federal Judicial Center for its study was July 1, 1991, to June 30, 1993.

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).

The Conference, however, made a distinction 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 adopted a resolution stating that “[e]ach court of appeals may 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 Conference may adopt.”

The current policy, as published 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.

Presently, only 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 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 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 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 S. 829, As Applied to Trial Courts

I would now like to discuss some of the specific concerns the Judicial Conference has with S. 829, as well as the more general issue of media coverage in trial courtrooms.

A. Cameras 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. That is not the issue. 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 argue that media coverage would benefit society because it would enable people to become more educated about the legal system and particular trials. But even if this is true, increased public education cannot be allowed to 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, balancing the positive effects of media coverage against an external factor such as the degree of impairment of the judicial process that camera coverage would bring is not the kind of thing judges should balance. Rather, our mission is to administer the highest possible quality of justice to each and every litigant. We cannot tolerate even a little bit of unfairness (based on media coverage), notwithstanding that society as a whole might in some way benefit, for that would be inconsistent with our mission.

The Conference maintains that camera coverage would indeed have a notably adverse impact on trial court proceedings. This includes the impact the camera and its attendant audience would have on the attorneys, jurors, witnesses,

and judges. We believe, for example, that a witness telling facts to a jury will often act differently when he or she knows that thousands of people are watching and listening to the story. This change in a witness's demeanor could have a profound impact on a jury's ability to accurately assess the veracity of that witness. Media coverage could exacerbate any number of human emotions in a witness from bravado and over dramatization, to self-consciousness and under reaction. In fact, even 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. Likewise, television cameras could have a profound impact on the deliberations of a jury. The psychological pressures that jurors are already under would be unnecessarily increased by the broader exposure resulting from the broadcasting of a trial and could conceivably affect a juror's judgment to the detriment of one of the parties.

B. S. 829 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; and requiring courts to disguise the face and voice of a witness upon his or her request), the Conference is convinced that camera coverage could, in certain cases, so indelibly affect the dynamics of the trial process that it would impair citizens' ability to receive a fair trial.²

For example, Section 1(a) and (b) of the bill would allow the presiding judge of an appellate or district court to decide whether to allow cameras in a particular proceeding before that court. If this legislation were to be enacted, we are confident that all federal judges would use extreme care and judgment in making this determination. Nonetheless, federal judges are not clairvoyants. Even the most straightforward or "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

²We recognize that the legislation would sunset the authority for district court judges to permit cameras three years after the date of enactment of the Act. There is no comparable sunset provision for the appellate courts.

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, there is no opportunity to later rescind remarks heard by the larger television audience. 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.

We also are concerned about the provision that would require courts to disguise the face and voice of a witness upon his or her request. 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:

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 over dramatization. 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 these concerns that cause the Judicial Conference of the United States to oppose enactment of S. 829.

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

Cameras provide a very strong temptation for both attorneys and witnesses to try their cases in the court of public opinion rather than in a court of law.

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’s exercising its right to a public trial.

D. Cameras Can Create Security Concerns

Although the bill includes language allowing witnesses who testify to be disguised, 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. Additionally, all witnesses, jurors, and United States Marshals Service personnel may be put at risk because they would no longer have a low public profile.

Also, national and international camera coverage of trials in federal courthouses would place these buildings, and all in them, at greater risk from terrorists, who tend to choose targets for destruction that will give their “messages” the widest exposure. Such threats would require increased personnel and funding to adequately protect participants in 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,”³ but now is available to anyone at any time because of the advances of technology. 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. Also, in many criminal and civil trials, which the media would most likely be interested in televising, much of the evidence introduced may be of an extremely private nature, revealing family relationships and personal facts, including medical and financial information. This type of information provided in open court, is already available to the public through the media. Televising these matters sensationalizes these details for no apparent good reason.

Involvement in a federal case can have a deep and long-lasting impact on all its participants, 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,

³United States Department of Justice v. Reporters Committee for the Freedom of the Press, 489 U.S. 749, 764 (1989).

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 real interest in the case—and its elevation to an event that allows and encourages thousands to become involved intimately in a case that essentially concerns a small group of private people or entities.

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. S. 829 Does Not Address the Complexities Associated with Camera Coverage in the Trial Courts

Media coverage of a trial would have a significant impact on that trial process. There are major policy implications as well as many technical rules issues to be considered, none of which are addressed in the proposed legislation. For example, televising a trial makes certain court orders, such as those sequestering witnesses, more difficult to enforce. In a typical criminal trial, most

witnesses are sequestered at some point. In addition, many related 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, S. 829 includes no funding authorization for implementation of its mandates. Regardless of whether funding is authorized, there is no guarantee that needed funds would be appropriated. The costs associated with allowing cameras, however, could be significant. For example, costs would be incurred to retrofit 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. When considering that these expenses may have to be incurred in each of the 94 districts, the potential cost could be significant. An additional considerable cost would be creation of the position of media coordinator or court administrative liaison to administer and oversee an electronic media program on a day-to-day basis. According to the FJC report, the functions of the media liaisons included receiving applications from the media and forwarding them to presiding judges,

coordinating logistical arrangements with the media, and maintaining administrative records of media coverage.

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 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 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 S. 829 have indicated that the legislation is justified in part by the FJC study referred to earlier. The Judicial Conference based, in part, its opposition to cameras in the courtroom on the same study. Given this apparent inconsistency, it may be useful to highlight several important findings and limitations of the study. As I noted earlier in the statement, the recommendations included in the FJC report, which were proposed by the research project staff, were reviewed within the FJC but not 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. As this Subcommittee is acutely aware, the number of criminal cases in the federal courts continues to rise. 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 study's conclusions ignore 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.

While the Conference did allow each United States court of appeals to determine whether to permit the use of cameras in that circuit, these high negative responses give us a very real indication as to why only two out of 13 courts of appeals have allowed their proceedings to be televised. The two courts that do allow camera coverage are the Second and Ninth Circuits, which voluntarily participated in the pilot project.

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 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.

Carefully read, the FJC study does not reach the firm conclusions for which it is repeatedly cited. The negative responses described above undermine such a reading. When considering legislation affecting cameras in the courtroom with such permanent and long-range implications for the judicial process, the negative

responses should be fully considered. Certainly that is what the Conference focused on. In reality the recommendations of the study reflect a balancing exercise which may seem proper to social scientists but which is unacceptable to judges who cannot compromise the interests of the litigants, jurors, and witnesses, even for a public benefit.

IV. Conclusion

When almost anyone in this country thinks of cameras in the trial courtroom today, they inevitably think of the O.J. Simpson case. I sincerely doubt anyone believes that the presence of cameras in that courtroom did not have an impact on the conduct of the attorneys, witnesses, jurors, and judge—almost universally to the detriment of the trial process. Admittedly, few cases are Simpson-like cases, 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 be discomfited with camera coverage. Nor is it a debate about whether the federal courts are afraid of public

scrutiny. They are not. Open hearings are a hallmark of the federal judiciary. It is also not about increasing the educational opportunities for the public to learn about the federal courts or the litigation process. The judiciary strongly endorses educational outreach, which could better be achieved through increased and targeted community outreach programs.

Rather, this is a decision 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 could seriously jeopardize that right. It is this concern that causes the Judicial Conference of the United States to oppose enactment of S. 829 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.

I have mentioned in my oral testimony that there is a fundamental distinction between appellate and trial proceedings. The Judicial Conference has serious concerns, which I share, that cameras are inappropriate in the trial court

setting, while acceptable, with discretion, in the Circuit Courts of Appeals.