

Testimony of
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TESTIMONY OF BARBARA COCHRAN
PRESIDENT,
RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION,
BEFORE THE
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY
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Mr. Chairman and Members of the Committee, I am Barbara Cochran, President of the Radio-Television News Directors Association. Thank you for inviting me to appear today on behalf of the 3,000 electronic journalists, educators, students and executives who comprise RTNDA, the world's largest professional organization devoted exclusively to electronic journalism.

At the Committee's request, I will address proposed legislation to allow media coverage of federal court proceedings. As you know, under present law, radio and television coverage of federal criminal and civil proceedings at both the trial and appellate levels is effectively banned. The Sunshine in the Courtroom Act of 2005 represents an important step toward removing the cloak of secrecy surrounding our judicial system by giving all federal judges the discretion to allow cameras in their courts under a three-year pilot program. Similarly, legislation introduced by Chairman Specter would open our nation's highest court to audiovisual coverage and would instill a sense of public trust in our judicial process by allowing Americans to witness for themselves what transpires within the United States Supreme Court, thus gaining insight into decisions that affect their daily lives. It is simply not right that Americans form their opinions about how our judicial system functions based on what they see and hear on the latest episode of Judge Judy or CSI, entertaining as those television programs may be. Nor does it make sense that the nominees for the Supreme Court are widely seen in televised hearings conducted by this Committee, only to disappear from public view the moment they are sworn in as justices. RTNDA's members are the people who have demonstrated that television and radio coverage works at the state and local level, and they can make it work on the federal level. RTNDA strongly believes that permitting electronic coverage of federal judicial proceedings--from federal district courts to the United States Supreme Court--is the right thing to do as a matter of sound public policy. Moreover, RTNDA believes that the decision to allow cameras in federal courtrooms is a legislative prerogative. Passage of this legislation will send a message to judges that giving the public access to courts through televised proceedings is a right and an opportunity, not an inconvenience. RTNDA respectfully submits that there is no compelling reason not to support the passage of this legislation. The First Amendment right of the public to attend trials has

been upheld by U.S. Supreme Court. The presence of cameras in many state courtrooms is routine and well-accepted. The anachronistic, blanket ban on electronic media coverage of federal proceedings conflicts with the values of open judicial proceedings and disserves the people. A courtroom is, by nature, a public forum where citizens have the right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place. The interests of our citizens are not fully served, in this day and age, by opening federal courtrooms to a limited number of observers, including the press, who can publicize any irregularities they note. In practice, what goes on inside a courtroom can only be effectively reported if the court permits journalists to use the best technology for doing so. There is no principled basis for allowing the print media and not the electronic media to use the tools of their trade inside federal courtrooms. Only the electronic media can serve the function of allowing interested members of the public not privileged to be in the courtroom to see and hear for themselves what occurs. As Judge Nancy Gertner aptly stated in testimony before this body's Subcommittee on Administrative Oversight and the Courts some five years ago, "public proceedings in the twenty-first century necessarily mean televised proceedings."

Technological advances in recent decades have been extraordinary, and the potential for disruption to judicial proceedings has been minimized. The cameras available today are small, unobtrusive, and designed to operate without additional light. Moreover, the electronic media can be required to "pool" their coverage in order to limit the equipment and personnel present in the courtroom, further minimizing disruption. It cannot seriously be disputed that audiovisual coverage, which would allow for complete and direct observation of the demeanor, tone, credibility, contentiousness, and perhaps even the competency and veracity of the participants, is the best means through which to advance the public's right to know as it pertains to the actions of the federal judiciary. Public access to judicial proceedings should not and need not be limited to reading second-hand accounts in newspapers, or hearing them on radio or seeing them on television. By nature, the electronic media is uniquely suited to ensure that the maximum number of citizens have direct and unmediated access to important events.

Admittedly, the electronic media is not a foreign element in the coverage of federal courts. Since the O.J. Simpson murder trial, many have been quick to point the finger at the camera as the cause of "sensationalism" and public distaste for our legal process. The empirical evidence to the contrary is overwhelming--the camera shows what happens; it is not a cause. Moreover, the prohibition on audiovisual coverage of federal judicial proceedings has resulted in viewers witnessing those events that take place on the courthouse steps, not those transpiring where it matters most--inside the courtroom. Jurors, prosecutors, lawyers, witnesses and judges on both the state and federal levels have overwhelmingly reported for the last decade or so that the unobtrusive camera has not had an adverse impact on trials or appellate proceedings. The pilot cameras program conducted by six federal districts and the Second and Ninth Circuit Courts of Appeals between 1991 and 1993 was a resounding success, resulting in a recommendation that cameras be allowed in all federal courts. All 50 states now permit some manner of audiovisual coverage of court proceedings. The District of Columbia is the only jurisdiction that prohibits trial and appellate coverage entirely. 43 states allow electronic coverage at the trial level.

Comprehensive studies conducted in 28 states show that television coverage of court proceedings has significant social and educational benefits. Most conclude that a

silent, unobtrusive in-court camera provides the public with more and better information about, and insight into, the functioning of the courts. Many have found that the presence of cameras does not impede the fair administration of justice, does not compromise the dignity of the court, and does not impair the orderly conduct of judicial proceedings. In the hundreds of thousands of judicial proceedings covered electronically across the country since 1981, to the best of RTNDA's knowledge there has not been a single case where the presence of a courtroom camera has resulted in a verdict being overturned, or where a camera was found to have any effect whatsoever on the ultimate result.

It is also worth noting that simultaneous audiovisual coverage of judicial proceedings improves the media's overall ability to accurately report on them. Such coverage affords a greater pool of reporters instantaneous access. In-court events, including quotations, can be verified simply by playing back an audio or videotape. As one New York study found, "reporting on court proceedings, both by newspaper and broadcast reporters, frequently is more accurate and comprehensive when cameras are present."

One compelling illustration of the public benefits resulting from audiovisual coverage of judicial proceedings involves the presidential election dispute in the fall of 2000. Given Florida state rules that permit cameras in the courtroom, the nation was able to watch and listen live as the Florida courts, including the state's Supreme Court, heard arguments in President Bush's bid to throw out hand-counted ballots that former Vice President Al Gore hoped would win him the presidency.

In response to requests from numerous media organizations, including RTNDA, to allow television coverage of the subsequent oral arguments before the United States Supreme Court, Chief Justice Rehnquist wrote, "the Court recognizes the intense public interest in the case and for that reason today has decided to release a copy of the audiotape of the argument promptly after the conclusion of the argument." Radio stations played the tapes in their entirety; their television counterparts played long excerpts, supplemented with photos and the familiar artists' sketches. Later, Chief Justice Rehnquist told a CNN reporter that he was very pleased with the reception that the playing of the court's audiotapes had gotten. People who before the election couldn't have named one justice now could name all nine. As divisive as the 2000 electoral contest was, the openness of the courtrooms produced the common understanding and acceptance necessary for political closure.

The Supreme Court has released audiotapes of other high profile cases in recent years, thus permitting the public to hear oral argument concerning such serious issues as United States courts' jurisdiction over claims by foreign citizens held at the Guantanamo Naval Base and whether the government may withhold constitutional protections from a U.S. citizen detained as an "enemy combatant." While the electronic media has welcomed release of these select recordings, they are no substitute for consistent, complete audiovisual coverage. Significantly, in response to questions posed by members of this Committee during his confirmation hearings, our new Chief Justice, John Roberts, stated that he is open to the idea of televising Supreme Court proceedings. Indeed, because of the federal ban, American citizens have been deprived of the benefits of first-hand coverage of significant issues that have come before the United States federal district courts, federal appellate courts, and the Supreme Court in recent years. For example:

? Whether the government can take possession of a person's private property and transfer it to developers to encourage economic development;
? Whether executing juveniles constitutes cruel and unusual punishment;
? Whether the term "Under God" in the Pledge of Allegiance is unconstitutional;
? Whether a state university may consider race and ethnicity in its admissions process;
? Whether parents have a constitutionally protected right to prevent schools from providing information on sexual topics to their children.

In contrast, on October 19 of this year, people throughout the world were able to turn on their television sets (or their computers) to witness for themselves opening proceedings in the trial of Saddam Hussein and seven of his associates accused of crimes against humanity. The judges involved and the Iraqi people apparently understood how critically important it was to make this process truly public. Ironically, if the United States had successfully argued to have the case come before one of our federal courts, our laws would have prohibited broadcast of the trial.

For whatever reasons, federal courts have not, on their own motion, taken steps to permit electronic coverage of their proceedings. Therefore, RTNDA respectfully submits that the time has come for Congress to legislate. As federal district Judge Leonie Brinkema wrote in rejecting requests for televised coverage of the trial of alleged terrorist Zacarias Moussaoui, whether or not to permit cameras in federal courtrooms is a question of social and political policy best left to the United States Congress. The legislation proposed by Senators Grassley and Schumer represents a careful approach by giving federal judges at both the trial and appellate levels the discretion to allow cameras in their courts under a three-year pilot program. At its conclusion, Congress and federal judges would be given an opportunity to review the program. Similarly, Chairman Specter's bill would afford a majority of the justices the discretion to disallow coverage where they believe the due process rights of a party would be violated.

I should mention here that RTNDA believes that federal law governing television coverage of the judicial branch should be grounded in a presumption that such coverage will be allowed unless it can be demonstrated that it would have a unique, adverse effect on the pursuit of justice or prejudice the rights of the parties in any particular case. Placing decisions as to whether or not to "pull the plug" on electronic coverage in the hands of the parties would render the legislation ineffective.

The public has a right to see how justice is carried out in our nation. As the Supreme Court has stated, people in an open society do not demand infallibility from their institutions, but it will be difficult for them to accept what they are prohibited from observing. Public scrutiny will help reform our legal system, dispel myth and rumors that spread as a result of ignorance, and strengthen the ties between citizens and their government. The courtroom camera not only gets the story right, it creates a record of the proceedings and opens a limited space to a broader audience. Experience shows that cameras in the courtroom work and that they do not interfere with administration or infringe on the rights of defendants or witnesses. RTNDA members have covered hundreds if not thousands of state proceedings across the country without incident and with complete respect for the integrity of the judicial process.

In the same way the public's right to know has been significantly enhanced by the presence of cameras in the House and then the Senate over the past two decades, the proposed legislation that is the subject of today's hearing has the potential to illuminate our

federal courtrooms, demystify an often intimidating legal system, and subject the federal judicial process to an appropriate level of public scrutiny. While both print and electronic media fulfill the important role of acting as a surrogate for the public, only television has the ability to provide the public with a close visual and aural approximation of actually witnessing events without physical attendance. It is time to provide unlimited seating to the workings of justice everywhere in the United States by permitting audiovisual coverage of federal judicial proceedings at all levels, including those before the United States Supreme Court.

Thank you, Mr. Chairman, for the opportunity to testify on behalf of RTNDA before your committee today.