

Testimony of
The Honorable Jan E. DuBois

Judge
District Court for the Eastern District of Pennsylvania
November 9, 2005

"Cameras in the Courtroom"
Wednesday, November 9, 2005, 9:30 a.m.
Dirksen Senate Office Building Room 226
Washington, D.C.

Written Testimony of JAN E. DUBOIS
United States District Court Judge
United States District Court for the
Eastern District of Pennsylvania
United States Courthouse
601 Market Street
Philadelphia, PA 19106

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, MY NAME IS JAN E. DUBOIS. I AM PRESENTLY A JUDGE ON THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, HAVING SERVED ON THAT COURT FOR OVER 17 YEARS. I AM APPEARING BEFORE YOU TODAY IN MY PERSONAL CAPACITY. I APPRECIATE THE INVITATION TO TESTIFY AND HOPE MY TESTIMONY WILL BE USEFUL TO YOU.

AS YOU REQUESTED, MY STATEMENT WILL COVER THE PILOT PROGRAM PROVIDING FOR ELECTRONIC MEDIA COVERAGE OF CIVIL PROCEEDINGS IN SELECTED FEDERAL TRIAL AND APPELLATE COURTS, INCLUDING MY TRIAL COURT, FROM JULY 1, 1991, TO DECEMBER 31, 1994. THE PILOT COURTS FOR THAT PROGRAM WERE, IN ADDITION TO MY COURT, THE U.S. DISTRICT COURTS FOR THE SOUTHERN DISTRICT OF INDIANA, DISTRICT OF MASSACHUSETTS, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DISTRICT OF NEW YORK, WESTERN DISTRICT OF WASHINGTON; AND THE U.S. COURTS OF APPEALS FOR THE SECOND AND NINTH CIRCUITS. THOSE PILOT COURTS WERE SELECTED FROM COURTS THAT HAD VOLUNTEERED TO PARTICIPATE IN THE EXPERIMENT. SELECTION CRITERIA INCLUDED SIZE, CIVIL CASE LOAD, PROXIMITY TO MAJOR METROPOLITAN MARKETS, AND REGIONAL AND CIRCUIT REPRESENTATION.

THE PILOT PROGRAM AUTHORIZED COVERAGE ONLY OF CIVIL PROCEEDINGS. GUIDELINES WERE ADOPTED BY THE JUDICIAL CONFERENCE AND I HAVE APPENDED A COPY TO MY WRITTEN TESTIMONY. THE GUIDELINES REQUIRED REASONABLE ADVANCE NOTICE OF A REQUEST TO COVER A PROCEEDING; PROHIBITED PHOTOGRAPHING OF JURORS IN THE COURTROOM, IN THE JURY

DELIBERATION ROOM, OR DURING RECESSES; ALLOWED ONLY ONE TELEVISION CAMERA AND ONE STILL CAMERA IN TRIAL COURTS AND TWO TELEVISION CAMERAS AND ONE STILL CAMERA IN APPELLATE COURTS; AND REQUIRED THE MEDIA TO ESTABLISH "POOLING" ARRANGEMENTS WHEN MORE THAN ONE MEDIA ORGANIZATION WANTED TO COVER A PROCEEDING. THE GUIDELINES ALSO PROVIDED THAT THE PRESIDING JUDGE HAD DISCRETION TO REFUSE, TERMINATE OR LIMIT MEDIA COVERAGE.

FROM JULY 1, 1991, THROUGH JUNE 30, 1993, MEDIA ORGANIZATIONS APPLIED TO COVER A TOTAL OF 257 CASES IN ALL OF THE PILOT COURTS. OF THESE, 186 OR 72% OF THE APPLICATIONS WERE APPROVED, 42 OR 16% WERE DISAPPROVED AND THE REMAINDER WERE NOT ACTED ON. OF THE TOTAL OF 257 CASES IN WHICH APPLICATIONS WERE MADE, 78 WERE SUBMITTED IN THE EASTERN DISTRICT OF PENNSYLVANIA. OF THE 78, 54 OR 69% WERE APPROVED, AND THE REMAINDER WERE DISAPPROVED OR NOT RULED ON.

THE EASTERN DISTRICT OF PENNSYLVANIA HAD THE GREATEST APPLICATION AND COVERAGE ACTIVITY. THE FEDERAL JUDICIAL CENTER REPORT ON THE PROGRAM ATTRIBUTED THAT RESULT, AT LEAST IN PART, TO THE FACT THAT IT WAS THE SECOND LARGEST DISTRICT COURT IN THE PILOT PROGRAM AND HAD A VERY ACTIVE MEDIA COORDINATOR.

OF THE 186 CASES APPROVED FOR COVERAGE, 147 WERE ACTUALLY RECORDED OR PHOTOGRAPHED. NINETEEN OF THE REMAINING 39 APPROVED CASES WERE EITHER SETTLED OR OTHERWISE TERMINATED, AND NINE APPLICATIONS WERE WITHDRAWN. IN 11 CASES, THE MEDIA FAILED TO APPEAR.

THE EASTERN DISTRICT OF PENNSYLVANIA, IN A STUDY UNDERTAKEN AT THE COMPLETION OF THE PILOT PROGRAM ON DECEMBER 31, 1994, REPORTED A TOTAL OF 117 BROADCASTING REQUESTS FROM THE MEDIA, 86 OR 74% OF WHICH WERE APPROVED, 16 OR 14% OF WHICH WERE DISAPPROVED, AND 15 OF WHICH WERE IN CASES THAT WERE SETTLED. THE BREAKDOWN OF THE 117 CASES IN WHICH APPLICATIONS WERE APPROVED DISCLOSES THAT ALMOST HALF, 57 OR 49%, WERE IN CIVIL RIGHTS CASES. OF THE 57 CIVIL RIGHTS CASES IN WHICH APPLICATIONS WERE MADE, 42 OR 74% WERE APPROVED, AND 15 OR 12% WERE DISAPPROVED. NEXT IN TERMS OF PERCENTAGE OF REQUESTS WERE TORT CASES, 21 OR 18%.

THE FEDERAL JUDICIAL CENTER EVALUATED THE PILOT PROGRAM AND IN 1994 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; FEDERAL JUDICIAL CENTER, 1994 ("FEDERAL JUDICIAL CENTER REPORT"). THAT REPORT INCLUDED RATINGS OF EFFECTS OF CAMERAS IN THE COURTROOM BY DISTRICT JUDGES WHO PARTICIPATED IN THE PROGRAM. A COPY OF THAT PART OF THE REPORT - TABLE 2 - IS APPENDED TO THIS WRITTEN TESTIMONY AND IS SUMMARIZED IN THE WRITTEN TESTIMONY SUBMITTED ON BEHALF OF THE JUDICIAL CONFERENCE. THE RATINGS BY THE JUDGES WHO PARTICIPATED IN THE PROGRAM WERE BOTH FAVORABLE AND UNFAVORABLE. FOR ME, THE MOST DISTURBING RATINGS ARE

THESE:

? 64% OF THE PARTICIPATING JUDGES REPORTED THAT, AT LEAST TO SOME EXTENT, CAMERAS MADE WITNESSES MORE NERVOUS.

? 46% OF THE JUDGES BELIEVED THAT, AT LEAST TO SOME EXTENT, CAMERAS MADE WITNESSES LESS WILLING TO APPEAR IN COURT.

? 41% OF THE PARTICIPATING JUDGES FOUND THAT, AT LEAST TO SOME EXTENT, CAMERAS DISTRACTED WITNESSES.

? 56% OF THE PARTICIPATING JUDGES FOUND THAT, AT LEAST TO SOME EXTENT, CAMERAS VIOLATED WITNESSES' PRIVACY.

THE FEDERAL JUDICIAL CENTER REPORT RECOMMENDED THAT THE JUDICIAL CONFERENCE "AUTHORIZE FEDERAL COURTS OF APPEALS AND DISTRICT COURTS NATIONWIDE TO PROVIDE CAMERA ACCESS TO CIVIL PROCEEDINGS IN THEIR COURTROOMS" THOSE RECOMMENDATIONS WERE REVIEWED AND APPROVED BY THE JUDICIAL CENTER STAFF, BUT WERE NOT REVIEWED BY ITS BOARD. AS YOU KNOW, THE JUDICIAL CONFERENCE DISAGREED WITH THE CONCLUSIONS DRAWN BY THE FEDERAL JUDICIAL CENTER REPORT AND BARRED CAMERAS IN DISTRICT COURTS BECAUSE OF THE POTENTIALLY INTIMIDATING EFFECT OF CAMERAS ON PARTIES, WITNESSES AND JURORS.

BEFORE GRANTING OR DENYING AN APPLICATION FOR TELEVISION COVERAGE IN CASES BEFORE ME IN THE PILOT PROGRAM, IT WAS MY PRACTICE TO CONVENE A CONFERENCE OR TO ADDRESS THE MATTER AT THE FINAL PRETRIAL CONFERENCE. THE MOST COMMONLY ADVANCED OBJECTIONS DURING SUCH CONFERENCES WERE THESE:

1. ADVERSE EFFECT ON PARTIES. IN SOME CASES PLAINTIFFS WERE CONCERNED ABOUT DISCLOSING MATTERS OF AN EXTREMELY PRIVATE NATURE SUCH AS FAMILY RELATIONSHIPS, MEDICAL INFORMATION, AND FINANCIAL INFORMATION. DEFENDANTS EXPRESSED CONCERN ABOUT THE RISKS OF DAMAGING ACCUSATIONS MADE IN A TELEVISED TRIAL. IN AT LEAST ONE CASE, A DEFENSE ATTORNEY SAID THE THREAT OF A TELEVISED TRIAL WOULD CAUSE THE DEFENDANT TO CONSIDER SETTLEMENT REGARDLESS OF THE MERITS OF THE CASE FOR THE SOLE PURPOSE OF AVOIDING THE TELEVISION COVERAGE.
2. ADVERSE EFFECT ON WITNESSES. COUNSEL WERE CONCERNED THAT CAMERAS WOULD MAKE WITNESSES LESS WILLING TO APPEAR AND, WHEN IN COURT, WOULD MAKE WITNESSES MORE NERVOUS. THAT PRESENTS A REAL CONCERN FOR A TRIAL JUDGE. AS A RESULT, I WAS PREPARED TO DIRECT THAT THE TELEVISION CAMERA EITHER BE REMOVED FROM THE COURTROOM OR NOT BE OPERATIONAL DURING THE TESTIMONY OF ANY WITNESS WHO OBJECTED TO THE CAMERA.

I APPROVED REQUESTS FOR TELEVISION COVERAGE IN 3 CASES - A PRODUCT LIABILITY CASE ON THE FIRST DAY OF THE PROGRAM, JULY 1, 1991, A CLASS ACTION ON BEHALF OF ALL STATE PRISONERS IN PENNSYLVANIA IN WHICH PRISON CONDITIONS WERE CHALLENGED AS UNCONSTITUTIONAL, AND A CASE FILED BY A REPUBLICAN CONGRESSMAN AGAINST A DEMOCRATIC LIEUTENANT GOVERNOR OVER THE FAILURE TO CALL A SPECIAL ELECTION AT AN EARLY

DATE FOR THE CONGRESSMAN'S VACATED STATE SENATE SEAT. THERE WERE CAMERAS IN THE COURTROOM FOR ONE DAY OF THE PRODUCT LIABILITY CASE. THERE IS NO RECORD OF CAMERAS IN THE COURTROOM IN THE TWO OTHER CASES.

IN THE ONE CASE IN WHICH CAMERAS WERE PRESENT IN MY COURTROOM, THE PRODUCT LIABILITY CASE, THERE WERE NO OBJECTIONS TO THE TELEVISION COVERAGE EITHER FROM THE PARTIES OR FROM WITNESSES. I DID NOT ALLOW CAMERAS IN THE COURTROOM DURING JURY SELECTION. AFTER THE JURY WAS CONVENED, I ASKED WHETHER ANY JURORS HAD ANY OBJECTION TO CAMERAS IN THE COURTROOM WITH THE PROVISIO THAT THE CAMERAS WOULD NOT FOCUS ON THEM. THEY HAD NO OBJECTIONS.

I WAS ALSO CONCERNED DURING THE PRODUCT LIABILITY TRIAL THE CAMERA WOULD BE IN THE COURTROOM ON ONE DAY AND THEN BE REMOVED, AND THAT IS EXACTLY WHAT HAPPENED - THE CAMERA WAS IN THE COURTROOM ONLY ONE DAY. ANTICIPATING THAT POTENTIAL PROBLEM, I TOLD THE JURORS THAT THERE WAS NO GUARANTEE THAT THE MEDIA WOULD TELEVISE THE ENTIRE TRIAL AND THAT IT MIGHT BE "HERE TODAY AND GONE TOMORROW." I ALSO INSTRUCTED THEM THAT THEY WERE NOT TO CONCLUDE THAT EVIDENCE OR ARGUMENT PRESENTED DURING A TIME WHEN A CAMERA WAS IN THE COURTROOM WAS ANY MORE OR LESS IMPORTANT THAN ANY OTHER PART OF THE TRIAL.

OVERALL, THE VIEWS OF MY COLLEAGUES WHO PARTICIPATED IN THE CAMERAS IN THE COURTROOM PILOT PROGRAM WERE NOT UNFAVORABLE. HOWEVER, MOST OF THE JUDGES WHO COMMENTED WERE CONCERNED ABOUT THE ADVERSE IMPACT OF CAMERAS IN THE COURTROOM ON PARTIES, WITNESSES AND JURORS AND DEEMED IT OF CRITICAL IMPORTANCE TO RETAIN THE AUTHORITY TO DISAPPROVE OF USE OF CAMERAS, PARTICULARLY IN HIGH PROFILE CASES, AND TO LIMIT THE USE OF CAMERAS IN CASES SUCH AS BY NOT TELEVISING THE TESTIMONY OF A WITNESS WHO OBJECTED AND NOT FOCUSING ON JURORS. SOME JUDGES WHO PARTICIPATED IN THE PROGRAM WERE ALSO CONCERNED THAT THE MEDIA WOULD NOT BE INTERESTED IN TELEVISING AN ENTIRE PROCEEDING, AND WOULD USE ONLY SHORT SEGMENTS OF A PROCEEDING WITH VOICE-OVERS. I AM NOT GOING TO COMMENT ON THE EDUCATIONAL BENEFIT OF TELEVISING A SMALL PORTION OF A TRIAL EXCEPT TO SAY THAT IT WOULD BE VERY DIFFICULT TO PROVIDE MUCH VALUABLE INFORMATION ABOUT THE JUDICIAL SYSTEM IN THAT TYPE OF PRESENTATION.

MY PERSONAL VIEW IS THAT, AT THE TRIAL LEVEL, THE DISADVANTAGES OF CAMERAS IN THE COURTROOM FAR OUTWEIGH THE ADVANTAGES. IN SUCH A SETTING, THE CAMERA IS LIKELY TO DO MORE THAN REPORT THE PROCEEDING - IT IS LIKELY TO INFLUENCE THE SUBSTANCE OF THE PROCEEDING. I SAY THAT BECAUSE OF THE CONCERNS I HAVE EXPRESSED REGARDING OBJECTIONS OF PARTIES TO TELEVISED PROCEEDINGS AND THE POTENTIAL IMPACT OF A TELEVISION CAMERA ON WITNESSES AND JURORS.

THE PARAMOUNT RESPONSIBILITY OF A DISTRICT JUDGE IS TO UPHOLD THE

CONSTITUTION WHICH GUARANTEES CITIZENS THE RIGHT TO A FAIR AND IMPARTIAL TRIAL. IN MY OPINION, CAMERAS IN THE DISTRICT COURT COULD SERIOUSLY JEOPARDIZE THAT RIGHT.

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