



STATEMENT OF FRED GRAHAM
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BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
REGARDING
H.R. 2128, THE SUNSHINE IN THE COURTROOM ACT OF 2007
September 27, 2007

Chairman Conyers, Ranking Member Smith and Members of the Committee, my name is Fred Graham. I joined Court TV as an anchor when it first was launched in 1991. I served as the Chief Anchor and Managing Editor of Court TV. In that capacity, I hosted Court TV's morning trial coverage program *Open Court*. Recently, I assumed the new role of Senior Editor and serve as the Chair of Court TV's editorial board. I also continue to report on key legal news events from here in Washington, D.C. Prior to joining Court TV, I was a legal writer for *The New York Times* and law correspondent for CBS News. Very early in my career, I was the Chief Counsel of the Senate Judiciary Subcommittee on Constitutional Amendments under Chairman Estes Kefauver of Tennessee. I earned my law degree at Vanderbilt University, where I was the Managing Editor of the *Vanderbilt Law Review* and was elected to the Order of the Coif.

Mr. Chairman, Court TV strongly supports H.R. 2128, the Sunshine in the Courtroom Act of 2007. We believe that the First Amendment right of the people of the United States to the freedom of speech, particularly as it relates to their right to present their opinions on the affairs of the Government, cannot be exercised meaningfully without the ability of the public to obtain facts and information upon which to base their judgments about important issues and events. As the United States Supreme Court stated in *Craig v. Harney* (1974), "A trial is a public event." "What transpires in the court room," the Court continued, "is public property."

Further, Mr. Chairman, Court TV believes that the First Amendment right of the people of the United States to petition the Government to redress grievances, particularly as it relates to the manner in which the Government exercises its legislative, executive, and judicial powers under the Constitution, cannot be exercised meaningfully without the availability to the public of information about how the affairs of the Government are being conducted. As the Supreme Court noted in *Richmond Newspapers, Inc. v. Commonwealth of Virginia* (1980), "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."

H.R. 2128 would provide statutory authority for United States District Judges to allow, at their discretion, televised coverage of public trials. As the Supreme Court stated in *In re Oliver* (1948), "Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution." "The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion," the Court continued, "is an effective restraint on possible abuse of judicial power."

Mr. Chairman, by allowing delayed audio broadcasts of the oral arguments before the Supreme Court in last fall's partial-birth abortion and affirmative action cases, Chief Justice John Roberts has recognized the great public interest in nationwide access to important judicial proceedings. Building on that principle, Representatives Chabot and Delahunt have introduced H.R. 2128, their bipartisan legislation to give Federal judges the discretion to allow the televising of proceedings in their courtrooms. Senators Schumer and Grassley have introduced companion legislation in the Senate. An earlier version of H.R. 2128 passed the House Judiciary Committee as part of H.R. 1751, the Secure Access to Justice and Court Protection Act of 2005, in the 109th Congress.

H.R. 2128 would codify Chief Justice Roberts's inherent discretionary authority to allow the televising of Supreme Court proceedings. Presiding judges of panels of the Courts of Appeals and District Court Judges would be given statutory authority to exercise discretion in allowing televised coverage of proceedings in their courtrooms. The bill gives the Judicial Conference the authority to formulate and issue guidelines to which judges may refer in deciding whether to allow the televising of particular cases. H.R. 2128 also includes a three-year sunset provision.

Recognizing special concerns about televising trials in the District Courts, H.R. 2128 provides strong safeguards. On the request of any trial witness other than a party, a District Judge must order the face and voice of the witness to be disguised or obscured in a manner that renders the witness unrecognizable to the television audience. The bill also prohibits the televising of jurors.

H.R. 2128 is fully consistent with the trend in the states. All 50 states allow cameras at some level of their judiciaries. Based on our most recent review, 43 states permit cameras in their civil trial courts. Of

those, 39 states allow cameras in criminal trials. Thus, at the state level, there is a growing consensus that cameras in the courtrooms serve the public interest.

Mr. Chairman, Justice Oliver Wendell Holmes said, "The life of the law has not been logic, it's been experience." Since 1991, Court TV has covered more than 900 trials and other judicial proceedings, providing more than 30,000 hours of courtroom coverage. We have seen over the years how the participants in these trials "tune out" the camera and how the televised proceedings are conducted in the normal, orderly way. We have always made a special effort to cover trials that involve issues of great public interest and importance. We believe that through our coverage of these trials, the members of the public who have watched them have gained an enhanced respect for our judicial system and a greater understanding of our laws.

The trials that Court TV has covered have involved many of the most serious social, political, cultural and economic issues of our time. In 1992, for example, Court TV provided live coverage of a hearing before the International Court of Justice in a case involving the 1988 terrorist bombing of Pan Am Flight 103, which killed 270 people, over Lockerbie, Scotland. We also covered the criminal trials of Dr. Jack Kevorkian, who was accused of violating state laws against assisted suicide and euthanasia. In 2005, we covered the trial of the notorious Columbus, Ohio, highway shooter Charles McCoy, who admitted to a string of shootings, one of which killed a woman, but claimed innocence by reason of insanity. Also in 2005, we covered the case of *Mississippi v. Killen*, in which 80-year old Edgar Killen stood trial for murder in the deaths of three civil rights workers who were killed while registering black voters in rural Mississippi.

We at Court TV believe that our trial coverage serves very important public interests. At times, in fact, our trial coverage can help diffuse highly charged, volatile situations in very controversial cases. One of the best examples of this occurred in a case that attracted considerable national attention, the 2000 trial of four New York City police officers who were charged in the shooting death of an unarmed man, Amadou Diallo.

Judge Joseph Teresi, the trial judge who was assigned to the case, understood the importance and value of having the New York City public watch the trial after venue was relocated to Albany. When the televised trial resulted in the acquittal of the police officers, public acceptance of the verdict was widely attributed to the fact that the people of New York had been able to watch and listen to the proceedings with their own eyes and ears. After the trial, then-New York City Mayor Rudolph Giuliani commended the trial judge for opening the courtrooms to cameras. As a result of televised coverage of the Diallo trial, Mayor Giuliani commented, the public "had the opportunity to listen and to see and to observe all of the witnesses; to observe the judge and the way in which he conducted the case; to sit by and listen to all the analysis the jury went through; and, they can draw their own judgment." "And I believe that fact alone—the camera and the television coverage of it," the Mayor continued, "—has changed the minds of a lot of people about what happened."

Mr. Chairman, in the sixteen years that Court TV has been televising more than 900 trials, no judgment in the United States has been reversed because a television camera was in the courtroom. One has to look back more than four decades, to a time when television was in its infancy and cameras were still generally prohibited, to find a case to the contrary. In *Estes v. Texas* (1965), by a bare 5-4 majority, the Supreme Court reversed a criminal conviction based in part on a determination that the televising of a pre-trial hearing and parts of the trial had prejudiced the defendant. Four members of the Court, responding to the argument that television technology and the public's reliance on television news would continue to advance, stated that "we are not dealing here with future developments," nor with "the hypothesis of tomorrow," but with "the facts as they are presented today." Justice Harlan's concurring opinion struck a similar note. Limiting his agreement with the majority to the facts of the case, Justice Harlan observed that "the day may come when television will have become so commonplace an affair" as to "dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process." "If and when that day arrives," he concluded, "the constitutional judgment called for now would of course be subject to reexamination."

Mr. Chairman, in this first decade of the 21st Century enters its final years, the day of which Justice Harlan spoke surely has arrived. When *Estes* was decided, audio visual technology was crude and other recording devices frequently intruded upon the dignity and conduct of courtroom proceedings with noisy cameras, bright klieg lights, snaking cables, and numerous technicians scurrying about the courtroom.

Today, by contrast, broadcasters typically employ a single, stationary camera, which produces no noise and requires no additional lighting. The camera is placed away from the proceedings and, if necessary, can be operated by remote control. Wiring is unobtrusive. Microphones are small and are never operated in such a way as to record private conversations between attorneys and clients. Those microphones, in fact, are turned off during all parts of the proceedings that are not part of the public record. Thus, the electronic media routinely record trial court proceedings without disturbing their orderly, serene conduct. Not only, to use Justice Harlan's words, is there no "reasonable likelihood" that the simple presence of a modern in-court camera will "disparage the judicial process," but also there can be no question that television has "become so commonplace an affair" that the day that Justice Harlan foresaw has, in fact, now arrived.

In fact, in today's world many Americans receive most of their news and information from television—so that if the judicial system is to be known and understood by the great mass of American citizens, it must communicate with them by way of television. Since years of experience have demonstrated that television coverage of judicial proceedings does no harm, it is in the public interest to open the judicial system to television coverage to the greatest feasible extent.

Finally, Mr. Chairman, I want to comment on the continuing opposition to this legislation by the Judicial Conference of the United States. I find it ironic indeed that the Judicial Conference opposes this bill. After all, H.R. 2128 does not require cameras in our Nation's Federal courts. Rather, it merely grants discretion to District Judges to decide, on a case-by-case basis, whether, and to what extent, to allow televised coverage of judicial proceedings in their courtrooms. Moreover, as I noted earlier, the bill explicitly grants the authority to the Judicial Conference to "promulgate advisory guidelines to which a presiding judge, at the discretion of that judge, may refer in making decisions with respect to . . . televising [judicial proceedings]." Thus, by opposing this bill, the members of the Judicial Conference seem to be questioning their judicial brethren's ability exercise their discretion wisely and to follow the advisory guidelines that the Conference itself would issue.

No one would dispute that U.S. District Judges in our Nation have tremendous power. They may declare acts of the Congress unconstitutional. They may issue injunctions against the President's exercise of his executive power if they find that it is contrary to the Constitution. They may sentence defendants convicted of capital crimes to death or send convicted defendants to prison for the rest of their lives. The notion that we can trust our Nation's Federal Judges with these awesome powers, but cannot trust them to exercise their discretion wisely in deciding whether to allow televised coverage of trials in their courtrooms is, to say the least, a strange one indeed.

Specifically, in his testimony on behalf of the Judicial Conference before the Senate Judiciary Committee on nearly identical legislation in 2005, Judge Diarmuid O'Scannlain asserted that "camera coverage would . . . have a notably adverse impact on trial court proceedings." "This, he continued, "includes the impact the camera and its attendant audience would have on the attorneys, jurors, witnesses, and judges." Once again, Mr. Chairman, all that H.R. 2128 does is to grant District Judges the discretion to decide, on a case-by-case basis, whether to allow cameras. In doing so, Judges necessarily will take into account whether cameras in any particular case would, in fact, have an "adverse impact" on "attorneys, jurors, witnesses and judges." In fact, the discretion that is granted by the bill is so broad that some Judges could decide that they do not believe that cameras are ever appropriate and make such determinations in each and every case before them.

Beyond that, as I noted earlier, H.R. 2128 provides that non-party witnesses have an absolute right to have their faces and voices obscured if they make that request of the Judge. In addition, as I also pointed out, H.R. 2128 specifically prohibits the televising of members of jurors. Thus, H.R. 2128 has built-in safeguards that address any legitimate concerns about the effects of cameras on witnesses and jurors. As for the Judicial Conference's concerns about the effects of cameras on attorneys and judges, H.R. 2128 leaves it to the Judge to evaluate any such effects and make the determination whether to allow cameras in light of them.

Thank you, Mr. Chairman, for this opportunity to testify. I would be happy to respond to any questions that you or the other members of the Committee may have for me.