

EXHIBIT B



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

July 23, 2009

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Sessions:

The Judicial Conference of the United States strongly opposes the “Sunshine in the Courtroom Act of 2009,” S. 657 (111th Cong.), because it provides for the use of cameras in federal trial court proceedings. Cameras can affect behavior in court proceedings. Cameras can even affect whether a case goes to trial. Cameras can also affect courtroom security of judges, witnesses, employees, and U.S. marshals. This is of particular concern in light of recent increased threats to federal judges. The Judicial Conference believes that these and other negative affects of cameras in trial court proceedings far outweigh any potential benefit. The Judicial Conference also opposes the legislation because it would empower any appellate court panel to permit cameras in their courtroom rather than retain that power within the management of each circuit.

The Judicial Conference bases its policy and opposition to the use of cameras in the federal trial court proceedings on decades of experience and study. The Conference considered the issue in a number of different situations and contexts – including a pilot project – and concluded that the presence of cameras in federal trial court proceedings is not in the best interest of justice. Federal judges must preserve each citizen’s right to a fair and impartial trial. Of course, federal trials have long been open to the media and public. But it is the studied judgment of the Judicial Conference that cameras can

Honorable Patrick J. Leahy
Honorable Jeff Sessions
Page 2

interfere with a fair and impartial trial. Thus, the use of cameras in trial courts would differ substantially from the impact of their use in legislative, administrative, or ceremonial proceedings.

Cameras can interfere with a fair trial in numerous ways. First, broadcasting proceedings can affect the way trial participants behave. Television cameras can intimidate litigants, witnesses, and jurors, many of whom have no direct connection to the proceeding and are involved in it through no action of their own. Witnesses might refuse to testify or alter their stories when they do testify if they fear retribution by someone who may be watching the broadcast.

Second, and similarly, camera coverage can create privacy concerns for many individuals involved in the trial, such as witnesses and victims, some of whom are only tangentially related to the case but about whom very personal and identifying information might be revealed. For example, efforts to discredit a witness frequently involve the revelation of embarrassing personal information. Disclosing embarrassing facts or accusations in a courtroom already creates challenges in court proceedings. Those challenges would be multiplied enormously if that information were aired on television with the additional possibility of taping and replication. This concern can have a material effect on a witness's testimony or on his or her willingness to testify at all.

Third, and as a consequence of the aforementioned points, camera coverage could also become a potent negotiating tactic in pretrial settlement discussions. Parties may choose not to exercise their right to trial because of concerns regarding possible camera coverage. Thus, allowing cameras could cause a "chilling effect" on civil rights litigation; plaintiffs who have suffered sex or age discrimination may simply decide not to file suit if they learn that they may have to relive the incident and have that description broadcast to the public at large. Or, parties litigating over medical issues may not wish to reveal their personal medical history and conditions to a broad audience.

Fourth, the presence of cameras in a trial court will encourage some participants to become more dramatic, to pontificate about their personal views, to promote commercial interests to a national audience, or to lengthen their appearance on camera. Such grandstanding is disruptive to the proceedings and can delay the trial.

The Federal Judiciary is therefore very concerned that the effect of cameras in the courtroom on participants would be to impact negatively the trial process and thereby interfere with a fair trial.

Honorable Patrick J. Leahy
Honorable Jeff Sessions
Page 3

In addition to affecting the fairness of a trial, the presence of cameras in a trial courtroom also increases security and safety issues. Broadcasting the images of judges and court employees, such as court reporters, courtroom deputies, and law clerks, makes them more easily identified as targets by those who would attempt to influence the outcome of the matter or exact retribution for an unpopular court ruling. Threats against judges, lawyers, and other participants could increase even beyond the current disturbing level. Cameras create similar security concerns for law enforcement personnel present in the courtroom, including U.S. marshals and U.S. attorneys and their staffs.

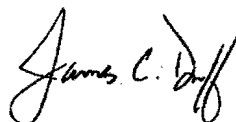
Finally, regarding the courts of appeals, in 1996 the Judicial Conference adopted the position that each circuit may decide for itself whether to permit photographic, radio, and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Conference may adopt. This policy ensures consistency within each circuit. The Sunshine in the Courtroom Act of 2009 would allow panels within the circuits to determine whether cameras will be allowed at their proceedings, rather than leaving the initial decision to the circuit's management. This will result in differing treatment of litigants within each circuit. Currently, the circuit-wide policies avoid piecemeal and ad hoc resolutions of the issue among the various panels convened within a court of appeals, and that approach is therefore better than the proposed legislative change.

* * *

For the foregoing reasons, the Judicial Conference of the United States strongly opposes legislation that allows the use of cameras in federal trial court proceedings and permits individual panels to use of cameras in all courts of appeals instead of deferring to each circuit's rules on such use.

Thank you for the opportunity to provide the position of the Judicial Conference on this legislation. The legislation raises issues of vital importance to the Judiciary. If we may be of additional assistance to you, please do not hesitate to contact our Office of Legislative Affairs at 202-502-1700.

Sincerely,



James C. Duff
Secretary

cc: Members, Senate Judiciary Committee

**REPORT OF THE PROCEEDINGS
OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES**

March 12, 1996

The Judicial Conference of the United States convened in Washington, D.C., on March 12, 1996, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge William H. Barbour,
Southern District of Mississippi

March 12, 1996

CAMERAS IN THE COURTROOM

The Judicial Conference agreed to authorize each court of appeals to 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 Judicial Conference may adopt. The Conference further agreed to—

- a. Strongly urge each circuit judicial council to adopt an order reflecting the Judicial Conference's decision to authorize the taking of photographs and radio and television coverage of court proceedings in the United States courts of appeals; and
- b. Strongly urge each circuit judicial council to adopt an order pursuant to 28 U.S.C. § 332 (d)(1), reflecting the September 1994 decision of the Judicial Conference (JCUS-SEP 94, pp. 46-47) not to permit the taking of photographs and radio and television coverage of court proceedings in the United States district courts. In addition, the Judicial Conference agreed to strongly urge the judicial councils to abrogate any local rules of court that conflict with this decision, pursuant to 28 U.S.C. § 2071(c)(1).

COMMITTEE ON CRIMINAL LAW

UNIVERSAL PRETRIAL DRUG TESTING

In December 1995, President Clinton directed the Attorney General to develop a "...universal policy providing for drug testing of all federal arrestees before decisions are made on whether to release them into the community pending trial." In February 1996, the Attorney General submitted a pretrial drug testing proposal to the Executive Committee, which referred the matter to the Committee on Criminal Law for recommendation to the March Judicial Conference. Reporting on the proposal to the Conference, the Criminal Law Committee recommended that the issue be referred back to that Committee. The Judicial Conference voted to refer the Attorney General's proposal regarding universal pretrial drug testing to the Criminal Law Committee for expeditious consideration and report to the Executive Committee, which is authorized to act on the matter on behalf of the Conference.