

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA**

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**In re: Notice of Opportunity for  
Comment on Limited Amendment to  
Local Rule 83.4 Concerning  
Broadcasting of Civil Proceedings**

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**COMMENTS OF THE RADIO TELEVISION DIGITAL NEWS ASSOCIATION**

The Radio Television Digital News Association (“RTDNA”)<sup>1</sup> appreciates this opportunity to comment on the proposed amendment to Local Rule 83.4, which creates an exception to the Court’s ban on recording and publication of district court proceedings for those district judges participating in the Judicial Conference of the United States’ pilot program for cameras in federal district courtrooms. RTDNA is the world’s largest professional organization exclusively serving the electronic news profession. RTDNA’s purpose is to set standards of newsgathering and reporting and to encourage excellence and ethics in electronic journalism.

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. Accordingly, RTDNA supports the proposed amendment to Local Rule 83.4 as an important first step toward recognizing the

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<sup>1</sup> Formerly the Radio-Television News Directors Association (“RTNDA”).

intent of our Founding Fathers to hold trials in open court, “before as many people as chuse to attend.”<sup>2</sup>

The present pilot program follows a similar trial conducted by the Judicial Conference in six federal district courts and the Second and Ninth Circuit Courts of Appeals from July 1, 1991 to December 31, 1994. In its November 1993 review of the pilot project, the Federal Judicial Center (“FJC”) offered a generally favorable evaluation of the experiment, finding that the attitudes of judges toward coverage of civil proceedings became more favorable after experience with electronic coverage.<sup>3</sup> This led the FJC’s Committee on Court Administration and Case Management to recommend in September 1994 that cameras be permitted in the federal courts, but the Judicial Conference declined to approve the Committee’s recommendation.<sup>4</sup>

The Committee’s endorsement of electronic coverage of federal judicial proceedings drew on the rich experience of the states. The majority of state statutes or court rules permitting electronic coverage were adopted after a period of study or experimentation. On the whole, the state studies concluded that “the majority of jurors and witnesses who experience electronic media coverage do not report negative consequences or concerns,” and that there was little if any distraction of jurors and witnesses or effect on witness testimony or juror deliberations. Experience with camera

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<sup>2</sup> *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 568-69 (1980), quoting 1 Journal of the Continental Congress, 1774-1789 at 107 (1904).

<sup>3</sup> See generally Federal Judicial Center, *Electronic Media Coverage of Federal Civil Proceedings: An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeals* 7-38 (1994) (“Overall, attitudes of judges toward electronic media coverage of civil proceedings were initially neutral and became more favorable after experience under the pilot program.”)

<sup>4</sup> See Report of the Proceedings of the Judicial Conference of the United States 47 (Sept. 20, 1994).

access since generally has been favorable, and dozens of cases have been extensively televised. Forty-six states presently allow audio-video coverage at the trial level.<sup>5</sup>

Alabama helped pioneer the trend of cameras in state courtrooms, first permitting coverage of trial and appellate courts in 1976.<sup>6</sup> Since then, the public has been able to watch the judicial system in action in several cases, including recent proceedings in the Madison County murder case against former University of Alabama Huntsville professor Dr. Amy Bishop Anderson and the Mobile County drug possession case involving former NFL quarterback JaMarcus Russell. In contrast, the public was unable to view video coverage of the recent trial in the United States District Court for the Northern District of Alabama, where a jury found two former Birmingham police officers not guilty of using unreasonable force in an arrest following a high speed chase. Video coverage is also absent from the ongoing trial in this Court of four state senators, several lobbyists, and the owner of Alabama's largest casino, who stand accused of participating in a vote buying scheme on a bill to legalize bingo gambling. Television stations have had to utilize other approaches to enhance their coverage, such as live blogs on their websites, but their on-air coverage has been limited to the use of graphics and file video despite the high interest in this case and its public significance.

There is no compelling reason not to support opening our federal courts to electronic coverage. Today, audiovisual coverage seems no more than a natural extension of new technologies that have been embraced by both state and federal court systems. Pooling arrangements, sometimes with the signal from a single camera shared

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<sup>5</sup> The RTDNA website contains a comprehensive survey of state approaches to cameras in the courtroom. See RTDNA, *Cameras in the Court: A State-By-State Guide*, [http://www.rtnda.org/pages/media\\_items/cameras-in-the-court-a-state-by-state-guide55.php](http://www.rtnda.org/pages/media_items/cameras-in-the-court-a-state-by-state-guide55.php) (last visited July 14, 2011).

<sup>6</sup> See David Graves, *Cameras in the Courts: The Situation Today*, 63 *Judicature* 24, 24 (1979).

by many news entities, have worked over the years to alleviate congestion. Moreover, in the present day, meaningful access necessarily means *televised* proceedings. The physical space limitations of a particular courtroom and geographic and other limitations on the public's ability to personally attend judicial proceedings validate the media's claim that it acts as a surrogate for the public in providing access to those proceedings. While both print and electronic media fulfill that important surrogate role, only television has the ability to provide the public with a close visual and aural approximation of actually witnessing judicial proceedings without physical attendance. When electronic coverage is banned, the public is forced to depend on secondhand accounts filtered by the perceptions of reporters, which necessarily limits their understanding of the judicial process. There are many aspects of a judicial proceeding - from seeing a witness to evaluate credibility, to fully understanding the interactions between the various participants - that are unlikely to be fully captured by secondhand reports. As Justice Brennan observed in his concurring opinion in *Richmond Newspapers, Inc. v. Virginia*, "the availability of a trial transcript is no substitute for a public presence at the trial itself. As any experienced appellate judge can attest, the 'cold' record is a very imperfect reproduction of events that transpire in the courtroom."

Two federal appellate courts – the Second Circuit and the Ninth Circuit – currently permit video coverage pursuant to a 1996 resolution of the Judicial Conference of the United States. This coverage has helped expose members of the public to an important aspect of the judicial process through a variety of media, including unedited coverage on CSPAN, TruTV, and cable news outlets; coverage on various local and national newscasts; and online coverage both on news websites and, in the case of the

Ninth Circuit, on its own website and YouTube channel. Among the important cases to which the public has gained increased access due to this coverage are *United States v. Arizona*, involving the constitutionality of Arizona’s law requiring state officers to check a person’s immigration status; *Arar v. Ashcroft*, a lawsuit by a Canadian citizen arguing that the United States government violated his Fifth Amendment due process rights by rendering him to the Syrian government; and *Perry v. Schwarzenegger*, the equal protection challenge to California Proposition 8, which limits marriage to relationships between a man and a woman. Live video of the *Perry* appellate hearing was viewed in community centers and law schools across the country, with at least one observer calling the proceeding “fascinating.”<sup>7</sup>

RTDNA understands that specific guidelines will govern this Court’s conduct of the present experiment, including the consent of both parties. The guidelines for the pilot project further provide that “proceedings may not be recorded without the approval of the presiding judge.”<sup>8</sup> RTDNA hopes that, in recognition of the value of this experiment in providing accurate data about electronic coverage, instances of judges withholding their consent will be rare, and a presumption of openness will govern. Moreover, the present experiment requires use of the court’s own recording equipment under the control of a court employee. As a practical matter, RTDNA urges the court to work with electronic journalists to create technical requirements for the quality of the video taken by the court so that it is suitable for broadcast or website streaming by the media.

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<sup>7</sup> Lisa Leff, *Televised Gay Marriage Hearing Draws Wise Audience*, The Salt Lake Tribune (Dec. 13, 2011), available at <http://www.sltrib.com/csp/cms/sites/sltrib/pages/printerfriendly.csp?id=50817588> (last visited July 23, 2011).

<sup>8</sup> Judicial Conference Committee on Court Administration and Case Management, Guidelines for the Cameras Pilot Project in the District Courts § 2(b).

The proposed amendment has the potential to further our knowledge about the effects of recording judicial proceedings while helping to illuminate our federal courtrooms and demystify an often intimidating legal system. RTDNA commends this Court's participation in the pilot project and urges the Court to adopt the proposed amendment to Local Rule 83.4.

Respectfully submitted,

Radio Television Digital News Association

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