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November 17, 2005

Honorable Arlen Specter
Committee on the Judiciary
United States Senate
Washington DC, 20510

Dear Mr. Chairman:

We are writing to commend you for recently holding a hearing on “cameras in the courtroom” and to explain the American Bar Association’s position on this issue. We would appreciate your including this letter in the hearing record.

The Association has had a long and cautious history with respect to broadcast coverage of federal judicial proceedings. In 1937, the ABA formulated its original ban on camera coverage as Canon 35 of the then Canons of Judicial Ethics because of concerns about preserving the dignity and decorum of the courtroom, safeguarding the right to a fair trial in criminal proceedings and avoiding the possible adverse impact on the fact-finding process and the administration of justice.

During the 1970s, many state courts started to permit electronic coverage of judicial proceedings. As courts gained experience and technology improved, the vast majority reported favorable results. After the Supreme Court issued its 1981 unanimous decision in *Chandler v. Florida*, 449 U.S. 560, that due process does not require an absolute ban on cameras in the courts, many additional states started to experiment.. The 1990 ABA Code of Judicial Conduct acknowledged the changing legal landscape by recasting the issue of electronic coverage as an administrative matter to be resolved by judges and the courts rather than one with ethical implications. The following year, the ABA Criminal Justice Standards for Fair Trial and Free Press supported conferring authority on the presiding judge to permit broadcast coverage of criminal proceedings consistent with the right to a fair trial and subject to express guidelines.

In 1991, the Judicial Conference of the United States began a three-year pilot program to permit electronic coverage of federal civil proceedings in selected trial courts and courts of appeal. The ABA, while supportive of this action, unsuccessfully urged that the pilot program be extended to include electronic coverage of U.S. Supreme Court proceedings.

Unfortunately, the Judicial Conference voted in 1995 to terminate all electronic coverage of federal courtroom proceedings, despite the favorable report of the

Federal Judicial Center, tasked with evaluating the project, which concluded that electronic media coverage had not adversely affected the administration of justice in the courts participating in the experiment.

The ABA objected to the finality of the Judicial Conference's action and urged it to authorize further experimentation. In 1996, the Judicial Conference modified its complete ban by authorizing only federal appellate courts to permit electronic coverage in accordance with promulgated guidelines.

The U.S. Supreme Court has never permitted live electronic coverage of its proceedings, although the public may listen to audiotapes of past oral arguments at the National Archives. The Court, however, has tacitly acknowledged the value of expanding access to its proceedings and the public's awareness that decisions rendered by the Supreme Court profoundly affect their daily lives by releasing the audiotape of the arguments in *Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70 (2000), just a few hours after oral arguments were concluded.

We remain committed to the belief that all federal courts, including the Supreme Court, should experiment with electronic media coverage of both civil and criminal proceedings. Allowing federal judges to decide on a case-by-case basis whether to allow electronic coverage of court proceedings under guidelines promulgated by the Judicial Conference will be good for the courts and good for the public. Courts that conduct their business openly and under public scrutiny protect the integrity of the federal judicial system by guaranteeing accountability to the people they serve. Judicial proceedings that are accessible and visible benefit the public because of the invaluable civic education that results when citizens witness federal courts in action. Ultimately, we all benefit because informed, engaged and civic-minded citizens are central to the vitality and preservation of our democratic institutions.

While we support the objective of expanding electronic coverage of federal court proceedings, we do not believe that the debate is over or that it is time for Congress to step in and mandate electronic coverage of federal judicial proceedings on a temporary or permanent basis. We hope instead that you will engage the federal judiciary in an ongoing discussion and urge the Judicial Conference to authorize and encourage the district courts, courts of appeal and the U.S. Supreme Court to experiment with electronic coverage of their proceedings.

Thank you for re-focusing the nation's attention on this issue.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans".

Robert D. Evans