Federal Practice

Judicial Conference Opposes Televised Federal Trials

Objectors foresee harm to judicial process

By Garth T. Yearick
Litigation News Associate Editor

The Judicial Conference of the United States "strongly opposes" new legislation pending in Congress that would give federal district judges the discretion to permit the televising of trials. The Conference contends that, to protect the trial process, cameras should continue to be banned from federal trial courts.

The Senate Judiciary Committee recently held hearings on the proposed law. If enacted, Senate Bill 829 would create the "Sunshine in the Courtroom Act" and grant judges the discretion to allow television cameras into federal trial court proceedings. Specifically, the bill would allow the trial judge to "permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides."

As it currently stands, the bill would also give the presiding judge of an appellate court—including the chief justice of the United States—discretion to permit television broadcasts of proceedings in that court. The bill would also require a district court to obscure the face and voice of any witness who so requests.

In a written statement presented at the hearing, the Conference vigorously opposed the portion of Senate Bill 829 affecting federal district courts. The Conference did not object to another portion of the bill that would give federal appellate courts similar discretion to broadcast appellate proceedings because it has, since 1994, afforded each court of appeals that discretion.

In its statement, however, the Conference maintained that "as to the trial courts, we believe that the intimidating effect of cameras on litigants, witnesses, and jurors has a profoundly negative impact on the trial process." The Conference highlighted security and privacy concerns for parties, lawyers, and judges that could arise from televised proceedings. Its statement also noted the danger that televised proceedings could be used as a negotiating tactic to force settlements in high-profile cases when a party does not want to have its cross-examination aired for the "edification of the general public."

Jeffrey J. Greenbaum, Newark, NJ, Co-Chair of the Section of Litigation's Federal Practice Task Force, agrees with the Conference: "Whenever Congress meddles in the judicial process and procedures, there have generally not been very good results," he says. Greenbaum maintains that Senate Bill 829 would have "unintended and untoward consequences."

"Television cameras have a real danger of making witnesses even more nervous in a situation already packed with tension," Greenbaum says. He believes that potential "grandstanding by lawyers and even judges in the public eye may interfere with the mission of the court system to judge cases in an impartial manner. Televised trials introduce the danger that lawyers will start playing to the public instead of to the judge and jury," Greenbaum says.

Richard Marmaro, Los Angeles, Co-Chair of the Section's Trial Practice Committee, agrees. "People do behave differently when they are in front of a camera," Marmaro says. "This applies to all participants in the trial, but especially to the lawyers and the witnesses. Televised trials would really subvert the fact-finding process because the witnesses would have considerations other than getting up and saying what really happened."

Marmaro cites privacy and security as issues that might intrude on a witness's televised testimony. "These concerns are particularly compelling in criminal cases where outside influences can adversely affect a defendant who is presumed to be innocent."

Although Greenbaum recognizes that certain state courts have had significant experience with televised trials, he notes that state courts often serve as testing grounds for new practices that would not necessarily work in federal court. In fact, in its statement, the Conference pointed out that "only 19 states provide the presiding judge with the type of broad discretion over the use of cameras contained in this legislation." Greenbaum also believes that the results of those state court experiments—like the O.J. Simpson criminal trial—"have not put the practice in good stead."

Marmaro recognizes that some states allow certain types of televised trials but notes that states vary widely in their rules and procedures. He believes the Conference's statements on S.B. 829 suggest that "federal courts are a bit more set in their ways and less open to change."

According to Marmaro, the Conference is saying, "If it's not broke, don't fix it."

Litigation News • American Bar Association • March 2006 • Volume 31 • Number 3
"Judicial Conference Opposes Televised Federal Trials" By Garth T. Yearick, published in Litigation News, Volume 31, No. 3, March 2006