Department of Justice

STATEMENT OF

JOHN C. RICHTER
UNITED STATES ATTORNEY
WESTERN DISTRICT OF OKLAHOMA
ON BEHALF OF THE DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 2128
THE "SUNSHINE IN THE COURTROOM ACT OF 2007"

PRESENTED

SEPTEMBER 27, 2007

TESTIMONY OF
THE HONORABLE JOHN C. RICHTER
UNITED STATES ATTORNEY
WESTERN DISTRICT OF OKLAHOMA
ON BEHALF OF THE DEPARTMENT OF JUSTICE
REGARDING
H.R. 2128, THE "SUNSHINE IN THE COURTROOM ACT OF 2007"
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
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MR. CHAIRMAN, RANKING MEMBER SMITH, MEMBERS OF THE COMMITTEE, MY NAME IS JOHN RICHTER. I PRESENTLY SERVE AS THE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF OKLAHOMA. IT IS MY PRIVILEGE TO SPEAK TO YOU TODAY ON BEHALF OF THE DEPARTMENT OF JUSTICE TO EXPRESS THE DEEP CONCERNS WE HAVE ABOUT H.R. 2128, THE "SUNSHINE IN THE COURTROOM ACT OF 2007." AS THIS COMMITTEE KNOWS, H.R. 2128 WOULD AUTHORIZE THE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT, ANY PRESIDING JUDGE IN THE 13 COURTS OF APPEALS, OR A JUDGE IN ANY DISTRICT COURT AT HIS OR HER DISCRETION TO PERMIT THE PHOTOGRAPHING, BROADCASTING, OR TELEVISING OF COURT PROCEEDINGS OVER WHICH THAT JUDGE WOULD BE PRESIDING. THE BILL ALSO WOULD DIRECT THE JUDICIAL CONFERENCE OF THE UNITED STATES TO PROMULGATE

GUIDELINES WITH RESPECT TO THE MANAGEMENT AND ADMINISTRATION OF SUCH LIVE COVERAGE.

IN PURSUING CASES, IT IS THE DUTY OF THE UNITED STATES TO SEE THAT JUSTICE IS DONE.[1] IN EXAMINING THE IMPLICATIONS OF THIS BILL, THEREFORE, THE DEPARTMENT OF JUSTICE LOOKS AT THIS BILL WITH AN EYE TOWARD WHETHER IT WILL CONTRIBUTE OR DETRACT FROM THE CAUSE OF JUSTICE. TO BEGIN, COURT PROCEEDINGS ARE HELD FOR THE SOLEMN PURPOSE OF SEEKING TO ASCERTAIN THE TRUTH, WHICH IS THE FUNDAMENTAL BASIS FOR A FAIR TRIAL. OVER MANY YEARS, BASED ON THE FOUNDATION LAID BY OUR FOUNDING FATHERS, AMERICAN COURTS HAVE DEVISED CAREFUL SAFEGUARDS BY RULE AND OTHERWISE TO PROTECT AND FACILITATE THE PERFORMANCE OF THAT HIGH FUNCTION. THE FEDERAL JUDICIARY HAS ALWAYS HELD THAT THE ATMOSPHERE ESSENTIAL TO THE PRESERVATION OF A FAIR TRIAL MUST BE MAINTAINED AT ALL COSTS.[2]

[1] *See Berger v. United States*, 295 U.S. 88 (1935).

[2] *See Estes v. Texas*, 381 U.S. 532, 540 (1965).

WHEN CONSIDERING NEW LAWS, WE GENERALLY LOOK AT WHETHER THE POTENTIAL BENEFIT TO BE GAINED BY THE LEGISLATION OUTWEIGHS THE POTENTIAL HARM IT WILL CAUSE. WITH APOLOGIES TO JUDGE LEARNED HAND, THE FATHER OF COST-BENEFIT ANALYSIS[3], IN CONSIDERING THE EFFICACY OF H.R. 2128 AND THE BROADCAST OF COURT PROCEEDINGS, WE MUST WEIGH THREE VARIABLES: (1) THE LIKELIHOOD OR PROBABILITY OF HARM TO THE CAUSE OF JUSTICE AS A RESULT OF THE MEASURE; (2) THE SEVERITY OF SUCH HARM; AND (3) THE ABILITY TO OR BURDEN OF AVOIDING THAT HARM THROUGH DENIAL OF THE PROPOSED MEASURE.

SEEN IN THIS LIGHT, MY TESTIMONY TODAY ON BEHALF OF THE DEPARTMENT OF JUSTICE WILL FOCUS ON THE THREE PERTINENT FACTORS THAT SHOULD BE WEIGHED IN CONSIDERING

[3] *See United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947) (Learned Hand, J. (the seminal case in which Judge Hand described the utilitarian instrumentalist standard as applied to tort liability).

H.R. 2128 AND THE LIVE COVERAGE OF FEDERAL COURT PROCEEDINGS. I WILL SET FORTH THE POTENTIAL HARMS TO OUR FEDERAL JUSTICE SYSTEM THAT THE DEPARTMENT OF JUSTICE BELIEVES H.R. 2128 MAY HAVE. I WILL ALSO DESCRIBE THE LIKELIHOOD AND SEVERITY OF THOSE HARMS, AS WELL AS EXAMINE SOME ASSERTED BENEFITS TO THE BROADCAST OF CASES. I CONCLUDE THAT THE HARMS THIS LEGISLATION COULD CAUSE TO THE JUSTICE SYSTEM GREATLY OUTWEIGH ANY PURPORTED BENEFIT TO BE GAINED BY THE MEASURE.

AS ATTORNEYS FOR THE UNITED STATES, WE, IN THE DEPARTMENT OF JUSTICE, HAVE GRAVE CONCERNS ABOUT THE POTENTIAL HARM THAT THIS BILL AND LIVE COVERAGE OF FEDERAL COURT PROCEEDINGS MAY HAVE ON KEY PARTICIPANTS IN THE TRUTH-SEEKING PROCESS. WE SHARE THE CONCERN OF THE JUDICIAL CONFERENCE, MANY FEDERAL JUDGES, AND MANY DEFENDERS THAT CAMERA COVERAGE MAY NEGATIVELY IMPACT JUDICIAL DECISION-MAKING. THE LATE CHIEF JUSTICE REHNQUIST AND OTHERS HAVE ARGUED THAT THE INVASIVE PRESENCE OF

CAMERAS MAY CREATE A "CHILLING EFFECT ON JUDGES AND CAUSE THEM TO FEEL RESTRAINED FROM ASKING POINTED QUESTIONS FOR FEAR OF PUBLIC MISPERCEPTION ON THEIR STANCE ON A PARTICULAR ISSUE."[4] SIMILARLY, AT THE TRIAL LEVEL, THERE IS A RISK THAT JUDGES COULD, EVEN UNINTENTIONALLY, SHAPE THEIR BEHAVIOR OR RULINGS UNDER THE HOT GLARE OF THE CAMERAS.

LIKEWISE, THE PRESENCE OF THE CAMERA, NO MATTER HOW UNOBTRUSIVE, MAY AFFECT THE BEHAVIOR OF THE LAWYERS, THE WITNESSES, AND THE JURORS. ONE FEDERAL JUDGE HAS OBSERVED: "[CAMERAS] AFFECT PEOPLES' PERFORMANCE AND MANNER OF BEHAVING – AND IT'S NOT ALWAYS FOR THE GOOD."[5] AFTER ALL, YOU DO NOT HAVE TO GO FAR BACK IN HISTORY TO FIND CRIMINAL

[4] *See* Charlie Rose Interview with Chief Justice William Rehnquist (PBS television broadcast Feb. 16, 2001).

[5] *See* Dan Horn, *U.S. Judges Camera-Shy in Courtroom*, Cincinnati Enquirer, Jan. 29, 2006 at 1B (quoting Federal District Court Chief Judge Sandra Beckwith of the Southern District of Ohio).

TRIALS THAT WERE TELEVISED WHERE GRANDSTANDING AND THE GLARE OF LIGHTS CREATED A "CIRCUS ATMOSPHERE."[6]

JUST AS THE CAMERA'S INCRIMINATING EYE AFFECTS THE JUDGES AND PARTIES, IT ALSO AFFECTS JURORS. EVEN IF THE JURORS THEMSELVES ARE NOT DEPICTED, AS THIS BILL WOULD REQUIRE, THE PRESENCE OF CAMERAS IN THE COURTROOM ESCALATES THE SENSATIONAL ASPECTS OF THE TRIAL AND THE COVERAGE MAY AFFECT JURORS'S PERCEPTIONS OF THEIR ROLE.[7] OTHERWISE QUALIFIED JURORS MAY NOT WANT TO SERVE UNDER THE GLARING SCRUTINY OF LIVE COVERAGE. MOST TROUBLING, THE MORE SENSATIONALIZED COVERAGE AS A RESULT OF THE CAMERAS MAY PRESSURE JURORS, UNCONSCIOUSLY OR

[6] *See, e.g.*, John Broder, *Clinton Says Televising Simpson Trial Led To "Circus Atmosphere."* L.A. Times, Sept. 22, 1995 (discussing President Clinton's criticism); *see also,* George Will, *Circus of the Century*, Washington Post, Oct. 4, 1995 at A25.

[7] *See, e.g.*, Joseph F. Flynn, *Prejudicial Publicity In Criminal Trials: Bring Shepard v. Maxwell Into The Nineties*, 27 New Eng. L. Rev. 857, 866 (1993); Kenneth B. Nunn, *When Juries Meet The Press: Rethinking The Jury's Representative Function In Highly Publicized Cases*, 22 Hastings Const. L.Q. 405, 430 (1995).

CONSCIOUSLY, TO BASE THEIR DECISION ON COMMUNITY DESIRES INSTEAD OF THE FACTS OF THE CASE.[8]

WE ALSO SHARE THE CONCERNS MANY IN THE DEFENSE BAR HAVE ABOUT TELEVISION'S EFFECT ON A WITNESS'S WILLINGNESS TO TESTIFY, OR EVEN THAT THE SUBSTANCE OF HIS TESTIMONY WILL BE ALTERED AND HARM THE FAIRNESS OF THE JUDICIAL PROCESS. EVEN WITNESSES WHO PARTICIPATE VOLUNTARILY MAY GIVE ALTERED TESTIMONY, EITHER BECAUSE THEY HAVE LISTENED TO OTHER TESTIMONY ON TELEVISION AGAINST A JUDGE'S ORDER, OR MERELY BECAUSE THE IDEA OF THEIR WORDS BEING BROADCAST TO AN AUDIENCE OF THOUSANDS OR MILLIONS IS FRIGHTENING OR UNNERVING.

AS AN ASSISTANT DISTRICT ATTORNEY, AN ASSISTANT U.S. ATTORNEY, AND NOW AS A UNITED STATES ATTORNEY, I HAVE CALLED ON MANY COOPERATING WITNESSES TO TESTIFY AS TO

[8] *See Sheppard v. Maxwell*, 384 U.S. 333, 353 (1966); *see also*, *Estes*, 381 U.S. at 545-46.

INCIDENTS AND CONDUCT THAT IS HUMILIATING, EMBARRASSING, AND ILLEGAL. I CAN TELL YOU FROM FIRST-HAND EXPERIENCE THAT IT IS HARD ENOUGH TO GAIN THAT COOPERATION AND CRITICAL TESTIMONY WITHOUT HAVING TO BATTLE THE SPECTER WEIGHING ON THE WITNESS'S MIND THAT HER TESTIMONY WILL BE BROADCAST TO A WIDER AUDIENCE THAN JUST THE PERSONS WHO ARE PRESENT IN THE COURTROOM.

CONSIDER ALSO THE INCREASED LIKELIHOOD AND POTENTIAL FOR HARM TO THE ABILITY OF OUR FEDERAL COURTS TO EXERCISE CONTROL OVER THE WITNESSES OUTSIDE OF THE COURTROOM DURING A TRIAL. IT IS THE NORM FOR A COURT TO ORDER THE SEQUESTRATION OF WITNESSES OR TO ENTER AN ORDER EXCLUDING WITNESSES FROM HEARING OTHER EVIDENCE DURING A TRIAL THAT MAY AFFECT THEIR TESTIMONY.[9] UNDER THE PRESENT RULES IN FEDERAL COURT, THE ONLY WAY A WITNESS OUTSIDE THE COURTROOM CAN HEAR THE TESTIMONY IS THROUGH A THIRD

[9] *See* Fed. R. Evid. 615.

PARTY WHO WAS IN THE COURTROOM TELLING HIM. WITH A LIVE BROADCAST, HOWEVER, THE RISK NECESSARILY IS INCREASED THAT, NOTWITHSTANDING THE ORDER, THE WITNESS NONETHELESS MAY HEAR THE ACTUAL LIVE TESTIMONY, WHICH UNDOUBTEDLY CARRIES A HIGHER ABILITY TO INFLUENCE WHAT THE WITNESS WILL SAY LATER IN THE TRIAL.

THIS CAN BE ALL THE MORE SERIOUS IF THE TESTIMONY TO WHICH THE WITNESS IS EXPOSED WAS IMMUNIZED TESTIMONY. COMPARE, FOR EXAMPLE, THE EFFECT IMMUNIZED CONGRESSIONAL TESTIMONY THAT WAS BROADCAST NATIONWIDE ULTIMATELY HAD ON THE CRIMINAL TRIAL OF LIEUTENANT COLONEL OLIVER NORTH IN THE IRAN-CONTRA CASE.[10] PRIOR TO HIS PROSECUTION BY THE INDEPENDENT COUNSEL, CONGRESS, IN FULL ANTICIPATION OF NORTH'S FUTURE PROSECUTION, GRANTED NORTH "DERIVED USE" IMMUNITY TO TESTIFY REGARDING HIS ROLE IN THE IRAN-CONTRA

[10] *See United States v. North*, 910 F.2d 843 (D.C. Cir. 1990), *opinion withdrawn and superseded in part on rehearing by United States v. North*, 920 F.2d 940 (D.C. Cir. 1990) (per curiam).

MATTER.[11] NETWORK TELEVISION AND RADIO CARRIED THE TESTIMONY LIVE TO A RIVETED NATIONAL AUDIENCE. THE INDEPENDENT COUNSEL, WHO BROUGHT THE CASE, TRIED TO AVOID THE EXPOSURE TO THE TESTIMONY AND DID NOT USE THE IMMUNIZED TESTIMONY AT TRIAL. MANY OF THE WITNESSES CALLED BY THE INDEPENDENT COUNSEL, HOWEVER, HAD SEEN THE TESTIMONY ON THEIR OWN.

UPON CONVICTION, NORTH APPEALED ARGUING THAT THE INDEPENDENT COUNSEL VIOLATED NORTH'S GRANT OF "DERIVED USE" IMMUNITY WHEN HE RELIED ON A WITNESS WHOSE TESTIMONY WAS SHAPED, DIRECTLY OR INDIRECTLY, BY COMPELLED TESTIMONY, REGARDLESS OF HOW OR BY WHOM HE WAS EXPOSED TO THAT COMPELLED TESTIMONY. THE COURT OF APPEALS AGREED. IN OVERTURNING NORTH'S CONVICTION, THE COURT EXPRESSED ITS CONCERN THAT THE MEMORY OF THE WITNESS WOULD BE

[11] *See Kastigar v. United States*, 406 U.S. 441 (1972) (in which the Court held that "derived use immunity" was sufficient in scope to exempt a witness from harm flowing from court-ordered testimony in violation of his Fifth Amendment right against compelled self-incrimination).

IMPERMISSIBLY REFRESHED BY HIS EXPOSURE TO IMMUNIZED TESTIMONY, WHICH MIGHT SERVE TO ENHANCE THE CREDIBILITY OF THAT TESTIMONY AT TRIAL.[12]

SIMILAR TO THE SPILL-OVER EFFECTS SEEN IN THE NORTH CASE, WITNESS EXPOSURE TO TELEVISED EVIDENCE OF OTHER WITNESSES CARRIES THE SAME SORT OF RISK OF "DERIVED INFLUENCE" CORRUPTION ON THE TRUTH-SEEKING FUNCTION OF A TRIAL. WITNESSES WHO ARE EXPOSED TO THE TESTIMONY OF OTHERS MAY BE ABLE TO ENHANCE THEIR TESTIMONY BY TESTIFYING IN CONFORMITY WITH WHAT THEY HAVE HEARD ELSEWHERE OR IN CONTRADICTING PREVIOUS TESTIMONY, GIVEN THAT THEY MAY HAVE THE BENEFIT OF A PREVIEW FROM A BROADCAST IN STYLING THEIR REMARKS.

[12] *See North*, 920 F.2d at 944& 994 n.4 (D.C. Cir. 1990) (per curiam); *see also, North*, 910 F.2d at 866-867.

WE ARE ALSO CONCERNED ABOUT THE SPILL-OVER EFFECTS IN CASES WHERE CO-CONSPIRATORS ARE TRIED SEPARATELY AND THE BROADCAST OF THE TRIAL OF ONE CO-CONSPIRATOR THREATENS TO CORRUPT THE POTENTIAL JURY POOL FOR THE TRIAL OF THE OTHER CO-CONSPIRATOR.[13]

IN WEIGHING THE HARM OF CAMERAS IN THE COURTROOM, IT IS IMPORTANT TO RECOGNIZE THAT THE POTENTIAL FOR HARM DOES NOT STOP WHEN THE TRIAL ENDS. BROADCAST TESTIMONY LIVES ON LONG AFTER A TRIAL HAS ENDED. PABLO FENJVES, WHO TESTIFIED IN THE O.J. SIMPSON MURDER TRIAL, REPORTED THAT AFTERWARDS HE HAD STRANGERS APPROACH HIM IN THE SUPERMARKET AND RECEIVED DEATH THREATS.[14]

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[13] *See, e.g., WALB-TV, Inc. v. Gibson*, 501 S.E.2d 821, 822-23 (Ga. 1998).

[14] Jill Smolowe, *TV Cameras On Trial: The Unseemly Simpson Spectacle Provokes A Backlash Against Televised Court Proceedings*, Time, July 24, 1995, at 38.

THIS RAISES ANOTHER SUBSTANTIAL CONCERN: THE SAFETY AND PRIVACY OF THE TRIAL PARTICIPANTS. MOST TRIAL PARTICIPANTS REALIZE THAT THEY MUST SACRIFICE SOME LEVEL OF PRIVACY BY TESTIFYING AT A PUBLIC TRIAL. THEIR SACRIFICE, HOWEVER, IS UNNECESSARILY MAGNIFIED WHEN CAMERAS PROVIDE EXPOSURE TO THE NATIONAL, RATHER THAN JUST THE LOCAL COMMUNITY. FURTHERMORE, THAT UNNECESSARY SACRIFICE IS INCREASED EXPONENTIALLY TODAY BECAUSE THE ADVANCES IN BROADCAST TECHNOLOGY MAKE THE BROADCASTS AVAILABLE NOT JUST WHEN THEY ARE FIRST AIRED BUT POTENTIALLY FOREVER ON THE WORLD-WIDE WEB.

UNITED STATES DISTRICT COURT JUDGE LEONIE BRINKEMA DESCRIBED THIS EXPONENTIAL LOSS OF PRIVACY AND INCREASED SECURITY RISK POSED TO WITNESSES IN AN ORDER SHE ISSUED IN THE ZACARIAS MOUSSAOUI CASE IN THE EASTERN DISTRICT OF VIRGINIA:

> ADVANCES IN BROADCAST TECHNOLOGY,..., HAVE...CREATED NEW THREATS TO THE INTEGRITY OF THE FACT

> FINDING PROCESS. THE TRADITIONAL PUBLIC SPECTATOR OR MEDIA REPRESENTATIVE WHO ATTENDS A FEDERAL CRIMINAL TRIAL LEAVES THE COURTROOM WITH HIS OR HER MEMORY OF THE PROCEEDINGS AND ANY NOTES HE OR SHE MAY HAVE TAKEN. THESE SPECTATORS DO NOT LEAVE WITH A PERMANENT PHOTOGRAPH. HOWEVER, ONCE A WITNESS'S TESTIMONY HAS BEEN TELEVISED, THE WITNESS'S FACE HAS NOT JUST BEEN PUBLICLY OBSERVED, IT HAS ALSO BECOME ELIGIBLE FOR PRESERVATION BY VCR OR DVD RECORDING, DIGITIZING BY THE NEW GENERATION OF CAMERAS OR PERMANENT PLACEMENT ON INTERNET WEB SITE AND CHAT ROOMS. TODAY, IT IS NOT SO MUCH THE SMALL, DISCRETE CAMERAS OR MICROPHONES IN THE COURTROOM THAT ARE LIKELY TO INTIMIDATE WITNESSES, RATHER, IT IS THE WITNESS'S KNOWLEDGE THAT HIS OR HER FACE OR VOICE MAY BE FOREVER PUBLICLY KNOWN AND AVAILABLE TO ANYONE IN THE WORLD.[15]

H.R. 2128 FAILS TO ENSURE THAT ATTORNEY-CLIENT CONVERSATIONS AND CONFIDENCES ARE PROTECTED. THE BILL ALSO FAILS TO PRECLUDE EVEN "THE AUDIO PICKUP OR

[15] *See United States v. Moussaoui*, 205 F.R.D. 183, 186-87 (E.D. Va. 2002).

BROADCAST" OF CONFERENCES IN A COURT PROCEEDING BETWEEN ATTORNEYS AND DEFENDANTS AND BETWEEN CO-COUNSEL."[16]

THE DEPARTMENT'S CONCERNS REGARDING THE EFFECT OF H.R. 2128 EXTEND BEYOND THE CONFINES OF THE TRIAL PROCESS OR THE COURTROOM. FOR EXAMPLE, THE BILL CONTAINS NO SAFEGUARDS TO PROTECT WITNESSES WHO PARTICIPATE IN THE DEPARTMENT'S WITNESS SECURITY PROGRAM FROM THE UNNECESSARY EXPOSURE CAUSED BY A BROADCAST.

IT IS CRITICAL WE ENSURE THAT WITNESSES UNDER THE PROTECTION OF THE U.S. GOVERNMENT NOT FACE GREATER RISK OF HARM BY THE BROADCASTING AND POTENTIAL RECORDING FOR ALL POSTERITY THEIR CURRENT APPEARANCE OR VOICE. PROPONENTS CONTEND THAT THIS CONCERN CAN BE ADDRESSED BY OBSCURING A WITNESS'S IMAGE AND VOICE DURING THE

[16] *See, e.g.,* S.C. App. Ct. R. 605(f)(2)(ii).

BROADCAST. SUCH PRECAUTIONS, HOWEVER, MAY STILL NOT BE ENOUGH. THE DEPARTMENT IS AWARE OF DEVICES AND TECHNOLOGY THAT MAY BE ABLE TO "UNOBSCURE" SUCH IMAGES AND VOICES.

OUR CONCERN ALSO EXTENDS BEYOND ISSUES ABOUT IMAGE AND VOICE. OFTEN, THE FACTUAL INFORMATION ALONE PROVIDED BY A WITNESS CAN GIVE AWAY IDENTITY. THE INCREASED POTENTIAL FOR PLACING FACTUAL INFORMATION RELAYED BY A WITNESS IN THE WITSEC PROGRAM ON THE INTERNET RAISES EVEN GREATER DIFFICULTIES FOR THE DEPARTMENT IN PROTECTING THAT INDIVIDUAL.

ON THE SECURITY FRONT, WE ALSO ARE CONCERNED THAT CAMERAS IN THE COURTROOM COULD HINDER THE ABILITY OF THE UNITED STATES MARSHALS SERVICE TO PROTECT TRIAL PARTICIPANTS. AS THIS COMMITTEE IS WELL AWARE, THREATS TO FEDERAL JUDGES AND THEIR FAMILIES ARE EVER PRESENT. ANY PROPOSAL THAT WOULD RESULT IN MAKING JUDGES MORE READILY

IDENTIFIABLE HOLDS THE POTENTIAL FOR INCREASING THEIR VULNERABILITY.

LIKEWISE, THE INTERESTS OF JUSTICE WOULD NOT BE ADVANCED BY THE WIDE DISSEMINATION OF THE IDENTITY OF WITNESS SECURITY PERSONNEL OR UNDERCOVER AGENTS WHO MAY HAVE TO RETURN TO SUCH DUTIES IN ANOTHER CITY OR STATE TO HAVE THEIR IMAGE FOREVER IMPRINTED ON THE INTERNET.

THE DEPARTMENT IS ALSO VERY CONCERNED ABOUT A RANGE OF OTHER POTENTIAL HARMS THAT ARE LEFT COMPLETELY UNADDRESSED BY H.R. 2128. FOR EXAMPLE, H.R. 2128 DOES NOT PROTECT AGAINST THE TELEVISING OF EVIDENCE THAT SHOULD NOT BE DISSEMINATED EXCEPT TO THE LIMITED DEGREE NECESSARY TO ENSURE DUE PROCESS AND A FAIR TRIAL. AT A TIME WHEN WE ARE FIGHTING TERRORISM, WE SHOULD BE CAREFUL ABOUT INTRODUCING RULES THAT WOULD EXPAND THE DISSEMINATION OF INFORMATION THAT WOULD BE PRESENTED AT TRIAL, PARTICULARLY IF THAT INFORMATION IS DECLASSIFIED

INFORMATION. AFTER ALL, EVEN IF WE HAVE TO DECLASSIFY NATIONAL SECURITY INFORMATION IN ORDER TO SUCCESSFULLY PROSECUTE A TERRORIST OR TERRORIST SUPPORTER, WE STILL SHOULD DO ALL WE CAN TO KEEP THE INFORMATION FROM BEING BROADCAST INTO EVERY DARK CORNER OF THE WORLD WITH INTERNET CAPABILITY.

THE SERIOUS SHORTCOMINGS OF H.R. 2128 ARE APPARENT IN OTHER AREAS OF CRITICAL IMPORTANCE TO THE PUBLIC. THE BILL DOES NOT ACCOUNT FOR THE INCREASED HARM CAUSED BY WIDER-THAN-NECESSARY DISSEMINATION OF SENSITIVE LAW ENFORCEMENT TECHNIQUES WHEN DISCLOSED IN OPEN COURT.

FOR EXAMPLE, LAST YEAR IN MY DISTRICT, WE BEGAN INVESTIGATING THE WALNUT GANGSTER CRIPS, A CRIMINAL GANG DEDICATED TO DRUG TRAFFICKING AND VIOLENCE. THE DEFENDANTS WE INVESTIGATED WERE SOPHISTICATED CRIMINALS, REGULARLY SWITCHING THEIR TELEPHONES AND OTHER MEANS OF COMMUNICATION IN ORDER TO AVOID LAW ENFORCEMENT

DETECTION. THERE WERE SOME MEANS OF COMMUNICATION, HOWEVER, THAT THEY THOUGHT WE WERE STILL UNABLE TECHNICALLY TO INTERCEPT AND SO THEY RELIED PARTICULARLY ON THOSE METHODS OF COMMUNICATION. AS PART OF THE INVESTIGATION, WE SOUGHT AND OBTAINED COURT-AUTHORIZED WIRETAPS NOT ONLY ON THEIR TELEPHONES, BUT ON THEIR OTHER METHODS OF COMMUNICATION IN ORDER THAT WE COULD INTERCEPT THESE GANGSTERS'S PLANS TO DELIVER DRUGS AND KILL RIVAL GANG MEMBERS. I AM PLEASED TO REPORT THAT IN LARGE PART BECAUSE OF OUR USE OF THESE COURT-AUTHORIZED WIRETAPS, WHICH ARE VERY SENSITIVE LAW ENFORCEMENT TECHNIQUES, WE WERE SUCCESSFUL IN GATHERING THE NECESSARY EVIDENCE TO DISMANTLE THIS VIOLENT CRIMINAL GANG. OF COURSE, AS PART OF THE DISCOVERY PROCESS IN THE CASES THAT FLOWED FROM THAT INVESTIGATION, WE NECESSARILY HAD TO REVEAL TO DEFENSE COUNSEL AND THE DEFENDANTS THAT WE WERE ABLE TO INTERCEPT NOT ONLY THEIR TELEPHONE CALLS BUT THEIR OTHER COMMUNICATIONS ON THE DEVICES THEY THOUGHT WE COULD NOT INTERCEPT. BUT, AS PART OF DISCOVERY

AND THE JUDICIAL PROCESS WE ONLY HAD TO TELL THESE DEFENDANTS AND THOSE PERSONS PRESENT IN OPEN COURT WHEN THE TECHNIQUES WERE DISCUSSED. WE DID NOT HAVE TO TELL EVERYONE ANYWHERE. IT IS HARD ENOUGH TO STAY AHEAD OF THE BAD GUYS FROM A TECHNOLOGICAL STANDPOINT WITHOUT EVERY TECHNIQUE BEING POTENTIALLY BROADCAST NOT JUST TO THE MEMBERS OF THE PUBLIC AND TRIAL PARTICIPANTS IN THE COURTROOM BUT ALSO ACROSS THE WORLD.

H.R. 2128 ALSO FAILS TO ADDRESS THE UNNECESSARY HARM TO VICTIMS WHO MUST TESTIFY. AS A PROSECUTOR WHO HAS WORKED FIRST-HAND WITH VICTIMS OF VIOLENCE, I KNOW THAT REQUIRING VICTIMS OF DOMESTIC VIOLENCE AND CHILD SEXUAL EXPLOITATION TO RELIVE THEIR EXPERIENCES BY TESTIFYING IN OPEN COURT IS DIFFICULT ENOUGH UNDER THE CURRENT RULES. LIVE BROADCAST OF THAT TESTIMONY WOULD ONLY ADD TO THEIR TRAUMA AND INVASION OF PRIVACY.

FURTHERMORE, THE FAILURE OF THE BILL TO ADDRESS THE HARMS RESULTING FROM INCREASED INVASIONS OF PRIVACY IS NOT LIMITED TO JUST VICTIMS IN CRIMINAL CASES. IN MEDICAL MALPRACTICE AND TORT CASES, FOR EXAMPLE, A PLAINTIFF'S MEDICAL HISTORY, PSYCHOLOGICAL HISTORY, FAMILY HISTORY, AND PHYSICAL AND EMOTIONAL DISTRESS ARE OFTEN AT ISSUE. UNDER THIS BILL, PLAINTIFFS, WHO MAY ALREADY HAVE BEEN HARMED THROUGH NEGLIGENCE, MAY FIND THAT THEY WILL INCUR ADDITIONAL HARM FROM A WIDESPREAD DISSEMINATION OF DEEPLY PERSONAL TESTIMONY AND EVIDENCE BECAUSE OF THE SENSATION SUCH INFORMATION WILL HAVE IN TODAY'S REALITY TV WORLD.

FURTHER, THE BILL DOES NOT ACCOUNT FOR THE IMPLICATIONS THAT TELEVISING JUDICIAL PROCEEDINGS WOULD HAVE ON THE GOVERNMENT'S ABILITY TO USE INFORMATION THAT IS PROTECTED BY THE PRIVACY ACT.[17] AT PRESENT, THE BALANCE

[17] *See* 5 U.S.C. § 552a (Privacy Act of 1974).

STRUCK BY CONGRESS ALLOWS THE UNITED STATES TO USE INFORMATION OTHERWISE PROTECTED BY THE PRIVACY ACT IN COURT. THE POTENTIAL FOR DISSEMINATION OF SUCH INFORMATION VIA FULL-SCALE MEDIA COVERAGE, HOWEVER, CHANGES THE BALANCE THAT HAS BEEN STRUCK BETWEEN PRIVACY PROTECTION AND THE GOVERNMENT'S ABILITY TO USE THAT INFORMATION TO ENSURE THAT JUSTICE IS DONE IN A COURT OF LAW. THE PRIVACY CONSIDERATIONS THAT ROUTINELY ARISE IN LITIGATION WOULD BECOME MORE SERIOUS AND THE BALANCE MIGHT BE STRUCK MORE OFTEN ON THE SIDE OF THE GOVERNMENT NOT BEING ABLE TO USE THE INFORMATION IF THAT USE RESULTED IN WIDE-SPREAD MEDIA EXPOSURE WITH NO CONTROL OVER ITS FUTURE USE. THIS WOULD BE OF PARTICULAR CONSEQUENCE TO OUR CIVIL LITIGATION IN CRITICAL AREAS LIKE EMPLOYMENT LITIGATION AND DISCRIMINATION CASES.

THE LENGTHY LIST OF HARMS I HAVE IDENTIFIED TODAY ARE NOT JUST EPHEMERAL. THESE HARMS ARE LIKELY TO OCCUR. EVEN ASSUMING THE BEST, COURT PROCEEDINGS ARE THE PRODUCT OF

HUMAN BEINGS, JUDGES, LAWYERS, PARTIES, WITNESSES, AND JURORS, WHO ARE ALL FALLIBLE. WE DO NOT JUST HAVE TO RELY ON THE EDUCATED SURMISE THAT THESE HARMS ARE LIKELY TO OCCUR UNDER THE GLARE OF THE CAMERA.

ACCORDING TO THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, THE FEDERAL JUDICIARY HAS REPEATEDLY LOOKED AT THIS ISSUE OVER MORE THAN SIX DECADES WITHOUT FINDING A BASIS FOR THE KIND OF SWEEPING CHANGE THAT IS PROPOSED IN H.R. 2128. IN THE 1990'S, A PILOT PROGRAM IN CIVIL CASES WAS ESTABLISHED IN SIX UNITED STATES DISTRICT COURTS AND ALSO IN A NUMBER OF THE COURTS OF APPEALS. THE RESULTS OF INTRODUCING CAMERAS INTO THE FEDERAL COURTS WERE DOCUMENTED AND ANALYZED. THESE JUDGES REPORTED THAT EVEN IN CIVIL CASES CAMERAS LED TO WITNESSES WHO WERE NERVOUS, DISTRACTED, AND LESS WILLING TO APPEAR IN COURT.[18]

[18] Cameras in the Courtroom: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 83 (statement of Judge Jan E. Dubois of the Eastern District of Pennsylvania) (expressing concern that 64% of the participating judges found that cameras made witnesses more nervous; 41% of the judges found that cameras led to witnesses who were distracted; 46% of judges thought the cameras made witnesses less willing to appear; and 56% of judges found that

AS ONE OF THE JUDGES WHO PARTICIPATED IN THE PILOT PROGRAM STATED, "THE CAMERA IS LIKELY TO DO MORE THAN REPORT THE PROCEEDING – IT IS LIKELY TO *INFLUENCE* THE PROCEEDING.[19] THE NEGATIVE REPERCUSSIONS TO JUSTICE CAUSED BY CAMERAS IN CRIMINAL CASES, WHERE LIBERTY IS AT STAKE, WOULD BE EVEN MORE SEVERE. AT THE END OF THE DAY, THEREFORE, THE FEDERAL JUDICIARY DETERMINED THAT IN THE INTERESTS OF JUSTICE, THE BETTER COURSE WAS TO ALLOW THE EXPERIMENT TO END WITHOUT MAKING ANY CHANGES TO FEDERAL PROCEDURE THAT HAS STOOD IN PLACE SINCE 1946 REGARDING CAMERAS IN TRIALS.[20]

IF THESE HARMS MATERIALIZE, AS THIS PILOT PROGRAM SHOWED, THEY ARE SEVERE. INFLUENCING A JUDGE'S RULING, A WITNESS'S TESTIMONY, AND A JURY'S VERDICT REPRESENT HARM TO OUR PROCESS OF THE MOST SEVERE KIND, PARTICULARLY WHEN

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cameras violated witnesses's privacy).

[19] *See id.* at 86-87 (emphasis added).

[20] *See* Fed. R. Crim. P. 53 (prohibiting courtroom photographing and broadcasting).

THE HARMS ARE NOT ALWAYS EASILY MEASURED, DETECTED, OR REMEDIED.

PROPONENTS OF CAMERAS IN THE COURTROOM DISCOUNT THESE HARMS OR THEIR LIKELIHOOD. THEY ALSO CONTEND THAT JUDICIAL PROCEDURES CAN BE PUT IN PLACE TO PROVIDE ADEQUATE SAFEGUARDS. PROPONENTS ASSERT THAT STATE RULES ALLOWING FOR BROADCASTING IN CASES HAVE BEEN IN USE FOR MANY YEARS, AND ONLY IN RARE INSTANCES HAS IT BEEN SUCCESSFULLY SHOWN THAT BROADCASTING AFFECTED THE OUTCOME OF THE CASE.

THE DEPARTMENT BELIEVES SUCH ASSERTIONS MISS THE POINT. FIRST, GIVEN THE LIKELIHOOD AND SEVERITY OF THE HARMS TO THE JUDICIAL PROCESS, AS EVIDENCED RATHER NOTORIOUSLY IN NUMEROUS SENSATIONAL TRIALS OVER THE YEARS AND THE JUDICIARY'S PILOT PROJECT, THE ALLEGED AMELIORATIVE EFFECTS OF THESE SAFEGUARDS ARE SIMPLY

INADEQUATE TO MAKE THIS BILL WORTH THE POTENTIAL HARM IT MAY HAVE TO THE CAUSE OF JUSTICE AT THE FEDERAL LEVEL.

SECOND, *ANY* RISK TO JUDICIAL DECISION-MAKING, FAIRNESS OF JURY DELIBERATIONS, AND ACESS TO AND ACCURACY OF WITNESS TESTIMONY THAT CAN BE SO EASILY AVOIDED SIMPLY IS NOT A RISK WORTH TAKING. ALTERING OUTCOMES TO SATISFY THE APPETITE AND HUNGER FOR INCREASED ENTERTAINMENT, SENSATIONAL FOOTAGE, AND REALITY TELEVISION SIMPLY IS NOT GOOD PUBLIC POLICY.

LASTLY, MANY OF THE MOST INSIDIOUS HARMS CAUSED BY CAMERAS IN THE COURTROOM CANNOT BE MITIGATED OR REMEDIED BY ANY REGULATIONS THAT MIGHT BE PROMULGATED BY THE JUDICIAL CONFERENCE. IN THE FIRST INSTANCE, IT IS IMPORTANT TO UNDERSTAND THAT THE HARMS TO JUSTICE CANNOT BE MEASURED SIMPLY BY LOOKING TO REVERSALS OF JUDGMENTS AND CONVICTIONS. FOR EXAMPLE, EVEN IF JURORS ARE NOT DEPICTED, WE WOULD NEVER KNOW HOW EVEN THE SIMPLE

PRESENCE OF THE BROADCASTS INFLUENCED A JUROR'S THINKING OR AFFECTED THE JURY'S SECRET DELIBERATIONS. EVEN IF ONLY THE JUDGE'S VOICE COULD BE HEARD DURING THE PROCEEDING, WE WOULD NEVER KNOW HOW THE POTENTIAL FACT THAT HIS WORDS MIGHT END UP LINKED ON BLOGS INFLUENCED THE JUDGE'S THINKING. SINCE NO REGULATION COULD EVER FULLY MITIGATE ALL EFFECTS OF THE CAMERA, IF THAT COVERAGE INFLUENCED JUDGES, WITNESSES, OR JURORS TO THE EXTENT THAT IT LED TO AN ACQUITTAL IN A CRIMINAL CASE THERE WOULD BE NO RIGHT FOR THE UNITED STATES TO APPEAL. LIKEWISE, IF THE COVERAGE INFLUENCED A COURT TO MAKE EVIDENTIARY RULINGS AGAINST THE GOVERNMENT, WHICH ARE RARELY APPEALABLE, THE NEGATIVE EFFECT OF SUCH INFLUENCE WOULD NEVER BE MEASURABLE OR REMEDIED.

MOREOVER, IT IS NOT JUST THE GOVERNMENT THAT FACES THE POTENTIAL FOR UNQUANTIFIABLE HARM, NOTWITHSTANDING ANY GOOD FAITH ATTEMPT TO MITIGATE HARM THROUGH JUDICIAL REGULATION. AS THE LAW PRESENTLY STANDS, A DEFENDANT

CARRIES A HIGH BURDEN OF SHOWING THAT THE COVERAGE RENDERED HIS TRIAL UNFAIR.[21] HE CARRIES THE BURDEN ON APPEAL OF SHOWING THE PREJUDICE AFTER THE RULINGS HAVE BEEN MADE, AFTER THE WITNESSES DEMEANOR AND EXPRESSION HAVE BEEN WITNESSED BY THE JURY, AFTER THE LAWYERS HAVE ALREADY MADE THEIR ARGUMENTS TO THE JURY, AND AFTER THE JURORS HAVE FOUND HIM GUILTY AND BEEN DISMISSED.[22] BECAUSE, AS DESCRIBED ABOVE, THE INFLUENCE AND EFFECT SUCH COVERAGE WOULD HAVE ON THE PROCESS WOULD SO OFTEN BE IMPOSSIBLE TO MEASURE OR DETECT AND, THEREFORE, NOT POSSIBLE TO REGULATE, THIS WOULD BE A VERY HIGH BURDEN FOR A DEFENDANT TO OVERCOME ON APPEAL.

WHAT PRICE DO WE PAY AS A SOCIETY TO AVOID ALL OF THESE HARMS TO OUR JUSTICE SYSTEM? WHAT DO WE GIVE UP?

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[21] *See Chandler v. Florida,* 449 U.S. 560, 575 (1981) .

[22] *See, e.g., State v. Hauptman,* 115 N.J.L. 412, 180 A. 809 (N.J. 1935), *cert. denied* 296 U.S. 649 (1935).

PROPONENTS OF CAMERAS IN THE COURTROOM MAKE TWO MAJOR ARGUMENTS. FIRST, THEY ARGUE THAT BY BROADCASTING THE PROCEEDINGS, THE MEDIA, AS A SURROGATE FOR THE PUBLIC, CAN ACT AS A CHECK BY "SHINING" THE "SUN" ON THE JUDICIAL BRANCH. SECOND, THEY ARGUE THAT THE EXPANSION OF THE ABILITY TO BROADCAST COURTROOM PROCEEDINGS WOULD PROVIDE A VALUABLE EDUCATIONAL OPPORTUNITY TO ALL AMERICAN CITIZENS.

THE FIRST ARGUMENT WAS PROBABLY STRONGEST IN THE FIRST CENTURY OF OUR REPUBLIC, AS FEAR OF THE ENGLISH STAR CHAMBER WAS STILL IN CITIZENS'S MINDS. IN THE PRESENT DAY, HOWEVER, IT IS HARD TO SEE HOW THE MEDIA REALLY NEEDS A GREATER PRESENCE IN ORDER TO ADEQUATELY MONITOR AND CHECK THE JUDICIARY. AFTER ALL, THE SUN IS ALREADY SHINING BRIGHTLY. DESPITE THE PRESENT RULES PROHIBITING BROADCASTS IN FEDERAL COURTS, COURTROOM DRAMA STILL DOMINATES MUCH OUR NEWS COVERAGE TODAY. AND, AS THE RULES AT THE FEDERAL LEVEL OPERATE TODAY, THE PRINT AND BROADCAST MEDIA STILL

HAVE THE EXACT SAME DEGREE OF ACCESS TO COURT PROCEEDINGS AS THE GENERAL PUBLIC. THE BRIGHT LIGHTS OF THE CAMERA ARE ON THE STEPS OF THE COURTHOUSE. JOURNALISTS ARE ALREADY IN THE COURTROOM FERRYING INFORMATION IMMEDIATELY TO CAMERAS AND FROM THERE TO THE PUBLIC. AS IT IS, THE LISTENING AND VIEWING PUBLIC IS GIVEN ALMOST INSTANT ACCESS TO INFORMATION ABOUT THE PROCEEDINGS. IN SHORT, WE GIVE UP VIRTUALLY NOTHING.

THE SECOND ARGUMENT, WHILE CARRYING SUPERFICIAL APPEAL, IS NOT PARTICULARLY WELL-SUPPORTED FROM AN EMPIRICAL PERSPECTIVE. IN A 2002 ARTICLE IN THE *HARVARD JOURNAL OF INTERNATIONAL PRESS/POLITICS*, PROFESSORS C. DANIELLE VINSON AND JOHN S. ERTTER REVIEWED TELEVISED COVERAGE OF CASES, INCLUDING BOTH CASES IN WHICH CAMERAS HAD BEEN PERMITTED AND THOSE IN WHICH THEY HAD NOT. THEY

ALSO REVIEWED TELEVISION AND NEWSPAPER COVERAGE OF THE SAME CASES.[23]

ONE OF THE MOST INTERESTING COMPARISONS WAS BETWEEN THE CASES OF JOHN BOBBITT AND LORENA BOBBITT. YOU MAY RECALL THAT MR. BOBBITT WAS CHARGED WITH ALLEGEDLY RAPING HIS WIFE. MRS. BOBBITT WAS CHARGED WITH MULTILATING HER HUSBAND FOLLOWING THE ALLEGED RAPE. THE UNDERLYING FACTS IN THE CASES WERE THE SAME. UNDER VIRGINIA LAW, MR. BOBBITT'S CASE WAS CONSIDERED A SEXUAL ASSAULT CASE AND, THEREFORE, CAMERAS WERE NOT PERMITTED IN THE COURTROOM. IN CONTRAST, MRS. BOBBITT'S CASE WAS NOT CONSIDERED A SEXUAL ASSAULT AND SO CAMERAS IN THE COURTROOM WERE PERMITTED.

THE PROFESSORS FOUND THAT THE IMPACT OF THE CAMERAS DRAMATICALLY AFFECTED THE SUBSTANCE OF THE REPORTING ON

[23] C. Danielle Vinson and John S. Ertter, *Entertainment or Education: How Do Media Cover The Courts?*, The Harvard International Journal of Press/Politics (2002) at 80.

THE TWO CASES. IN MR. BOBBITT'S TRIAL, WHERE CAMERAS WERE NOT PERMITTED, THE COVERAGE CONTAINED RATHER CLINICAL DESCRIPTIONS OF THE EVENTS AS DESCRIBED BY THE WITNESSES AND THEN FOCUSED ON THE LARGER IMPLICATIONS OF THE TRIAL – DOMESTIC ABUSE AND THE CALLS FOR THE NEED TO CHANGE MARITAL RAPE LAWS. THE EDUCATIONAL VALUE OF THE REPORTS FROM THE MEDIA WHO MERELY OBSERVED THE PROCEEDINGS WAS ARGUABLY GREATER THAN THE SENSATIONAL DRAMA OF THE CAMERA COVERAGE.

NOT SURPRISING, THE DRAMA PRESENTED IN BROADCASTS FROM THE CAPTURED LIVE TESTIMONY IN THE CASE AGAINST MRS. BOBBIT FOCUSED NARROWLY AND GRAPHICALLY ON THE BRUTAL MUTILATION, THE EMOTIONS OF THE WITNESSES, AND THE "STRATEGIC GAME BETWEEN THE TWO SIDES." NONE OF THE STORIES ON MRS. BOBBITT'S CASE RAISED THE LARGER QUESTIONS OF DOMESTIC ABUSE OR THE POLICY ISSUES RELATING TO MARITAL RAPE.

THESE PROFESSORS ALSO COMPARED TELEVISION AND NEWSPAPER COVERAGE OF A DIFFERENT CASE IN WHICH CAMERAS WERE PERMITTED IN THE COURTROOM.[24] THEY CONCLUDED THAT THE NEWSPAPER COVERAGE COVERED MORE DETAILS OF THE INCIDENT, THE ACTUAL JUDICIAL PROCESS, THE SUBSTANCE OF THE DEFENSE, AND THE LARGER SOCIETAL IMPACT OF THE CASE THAN THE TELEVISION COVERAGE, WHICH FOCUSED PRIMARILY ON THE MORE DRAMATIC ASPECTS OF THE EVENTS IN THE COURTROOM. ALTHOUGH THESE PROFESSORS DID NOT GENERALIZE THESE CASES TO ALL COVERAGE, AND NEITHER DOESTHE DEPARTMENT OF JUSTICE, THEIR FINDINGS CLEARLY RAISE LEGITIMATE QUESTIONS ABOUT WHETHER ARGUMENTS SUGGESTING CAMERAS WOULD AID EDUCATION ARE REALLY ACCURATE. THEIR STUDY MAY SUGGEST THAT CAMERAS IN THE COURTROOM ACTUALLY MAY UNDERMINE THE PUBLIC EDUCATION ABOUT THE JUDICIAL PROCESS AND DEGRADE SUPPORT FOR AND TRUST IN OUR COURTS. REGARDLESS, THIS STUDY'S FINDINGS AND SUGGESTIONS SHOULD NOT BE

[24] *See id.* at 92.

LIGHTLY DISREGARDED, PARTICULARLY WHEN THE INTEREST OF JUSTICE IS AT STAKE.

MR. CHAIRMAN, I WANT TO THANK THIS COMMITTEE FOR INVITING ME TO TESTIFY AND ALLOWING ME TO PRESENT THE DEPARTMENT'S VIEWS ON H.R. 2128. AS I HAVE BRIEFLY SET FORTH TODAY, THE POTENTIAL HARMS TO FAIR TRIALS AND THE CAUSE OF JUSTICE ARE MANY, ARE LIKELY, AND WOULD BE SEVERE. IN CONTRAST, THE BENEFITS, IF ANY, WOULD BE SMALL. I WILL END, THEREFORE, AS I BEGAN: THE POTENTIAL HARMS OF THIS LEGISLATION TO THE CAUSE OF JUSTICE GREATLY OUTWEIGH ANY PURPORTED BENEFIT TO BE GAINED BY THE MEASURE. THEREFORE, THE DEPARTMENT OF JUSTICE STRONGLY OPPOSES H.R. 2128. I WOULD BE PLEASED TO ANSWER ANY QUESTION YOU AND YOUR FELLOW COMMITTEE MEMBERS MAY HAVE.

THANK YOU.