

**TESTIMONY OF SUNNY HOSTIN, ESQ.,
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BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON THE
JUDICIARY**

Mr. Chairman and Members of the Committee, my name is Sunny Hostin. I am a Co-Host of The View on ABC News and a former Assistant United States Attorney for the District of Columbia. Thank you for inviting me to appear today.

At the Committee's request, I will address the issue of media coverage of federal court proceedings, and in particular, whether federal court proceedings, including those of the Supreme Court, should be televised or live streamed. At present, radio and television coverage of federal criminal and civil proceedings at both the trial and appellate levels is effectively banned. Similarly, while audio of Supreme Court oral arguments is made available to the public at the end of each argument week, contemporaneous live radio and television coverage is verboten.

I would like to direct my remarks to the effect that the absence of cameras in criminal federal proceedings and the Supreme Court has on African Americans in the United States in particular. The judicial system disproportionately affects the African American community in the United States. African Americans are the most incarcerated people in the world because the United States criminal justice system is the largest in the world. According to *The Sentencing Project*, by the end of 2015, over 6.7 million people were under some form of correctional control in the United States, including 2.2 million incarcerated in federal, state, or local prisons and jails. The rate of incarceration in the

United States dwarfs the rate of nearly every other nation. In this country, African Americans are more likely than white Americans to be arrested, convicted and receive lengthy prison sentences. African-American adults are 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely. As of 2001, one of every three black boys born in that year could expect to go to prison in his lifetime, as could one of every six Latinos—compared to one of every seventeen white boys. Disparities among women are less substantial than among men but are nevertheless prevalent. The United States in effect operates two distinct criminal justice systems: one for white people and one for people of color. *The Sentencing Project report submitted to the United Nations on Racial Disparities in the U.S. Criminal Justice System on April 19, 2018.*

Unsurprisingly, the vast majority of African Americans distrust the American judicial system disproportionately to other Americans and perceive it as unfair. *Pew Research Center, 2014. The Sentencing Project* found that the descriptors most often used by people of color to describe their own experiences with the justice system or the system in its entirety are “unfair, illegitimate, and excessive.” People of color, not personally impacted by criminal justice policies, like myself, have family members who have been. In one national survey, half of African Americans reported having a close friend or relative who was currently incarcerated, in contrast to one out of ten white respondents. *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies, Nazgol Ghandoosh, Ph.D. September 3, 2014.* Education does not lessen the fundamental distrust of the judicial system. In fact, more highly educated African Americans are more skeptical of the criminal justice system than their less-

educated counterparts. *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies*, Nazgol Ghandoosh, Ph.D. 9/3/14.

African Americans, no different from most other Americans, learn about the intricacies of the criminal system through the news media; however, they consume media disproportionately than their white counterparts. African-American consumers continue to lead the consumption of content across multiple platforms, according to a recent Nielsen 2019 Diverse Intelligence Series (DIS) report on African Americans. Nielsen's *It's In The Bag: Black Consumers' Path to Purchase* report indicates that in the first quarter of 2019 African Americans spent more than 50 hours watching live and time-shifted television a week, over 10 hours more than the total population. According to Nielsen, African Americans watch 37% more television than any other demographic. African American consumers also are more likely to consume new media, spending more time consuming video on their smartphones as compared to the total population. Nielsen reports that African Americans spend nearly 30 hours a week on websites and apps on their smartphones, more than three hours more than all consumers as a whole. *African Americans are Leaders in Media Consumption*, R. Thomas Umstead, September 15, 2019.

There exists no better cure for fundamental mistrust and perceived illegitimacy of the judicial system than transparency of the courts that define it, including the highest court in the land. The right of the public to attend trials is critical in that regard and it has been upheld by the U.S. Supreme Court. This is consistent with the Founders' view of the Third Branch, a judiciary whose only power is judgment, the effect of which depends on the trust and confidence of the citizens it serves. To be sure, while they may have the right to see each and every federal and Supreme Court proceeding, no American is able to do so, a substitute for that level of judicial

transparency is necessary if the trust of those most affected by the justice system is to be acquired, restored and maintained. Televising or live streaming is, in my judgment, that substitute.

Supreme Court Justices seem to have had varying opinions on the propriety of having cameras in the courtroom. For example:

Chief Justice John G. Roberts Jr.

“We’re going to be very careful before we do anything that might have an adverse impact.”

— *Ninth Circuit judicial conference, July 13, 2006*

Justice Antonin Scalia

“Not a chance, because we don’t want to become entertainment.”

— *CNBC interview, Oct. 10, 2005*

Justice Anthony M. Kennedy

“. . . [T]elevising our proceedings would change our collegial dynamic. . . .”

— *House Appropriations subcommittee, March 8, 2007*

Justice Clarence Thomas

“. . . [S]ecurity is on the foremost of all our minds now since 9/11. . . .”

— *House Appropriations subcommittee, March 8, 2007*

Justice Ruth Bader Ginsburg

“A decision of this issue . . . should be decided after really pretty serious research and study. . . .”

— American Bar Association panel, Nov. 10, 2005

Justice Stephen G. Breyer

“. . . [A]t the moment, I think it’s quite uncertain what the answer is.”

— Interview, C-SPAN, Dec. 4, 2005

Justice Samuel A. Alito Jr.

“I will keep an open mind despite the decision I took in the Third Circuit [in favor of permitting camera coverage].”

— Confirmation hearing, Jan. 11, 2006

Justice Sonia Sotomayor

“I have had positive experiences with cameras.”

— Confirmation hearing, July 14, 2009

Justice Elena Kagan

“I think it would be a great thing for the institution, and more important, I think it would be a great thing for the American people.”

— Confirmation hearing, June 29, 2010

Once on the Court, those opinions, if in favor of transparency have morphed into almost uniform opposition. Justices have given varying reasons for opposing transparency from a change in the camaraderie on the Court, misleading impressions of the Court, potential showmanship by the Justices and even the obstreperous presence of

cameras. Respectfully, none of these reasons is sufficient to override the public's constitutional right to access, in real time, to the proceedings of the highest court in our country, which is necessary to the rebuilding, and maintenance of trust in our criminal justice system. The experience of state court judiciaries, at least at the high court level, belies these rationalizations. Prior to becoming a prosecutor, I clerked for a judge of the Maryland Court of Appeals, Maryland's Supreme Court. That Court, in 2006, began videotaping and live streaming its oral arguments and other proceedings. Significantly, the first case live streamed was Conaway v. Deane, 401 Md. 219 (2007), involving same sex marriage. None of the parade of horribles occurred or has occurred since. Indeed, both judges and lawyers see the live streaming as an asset for the Court and the former Chief judge of that Court believes it contributes to the public's trust and confidence in the Court. I am not aware of any contrary view from any of the state courts that are live streaming their arguments.

Public access to a judicial proceeding must not be limited to seeing a report on television, often times distilled by a journalist without a legal background. As one of the only Afro-Latina journalists with a federal prosecutorial background, I am often tasked with interpreting complex legal issues and cases on television. I have experienced firsthand the confusion of the intricacies of the legal system and the desire to understand its complexities by communities of color. I have also seen networks in a rush to be first, get the law wrong, instead of getting it right. The Court's refusal to allow cameras has led to the very things the Justices fear - misinterpretation, distrust and confusion. In the hundreds of thousands of proceedings covered electronically across the country since 1981, to my understanding, there has not been a single case where the presence of a

courtroom camera was found to have any effect on the ultimate result. Indeed, audiovisual coverage of proceedings improves the media's overall ability to accurately report on them. Such coverage affords all reporters and the public instantaneous access. Proceedings can be verified not by reading a transcript (which are transcribed by stenographers thus allowing for human error), but just by playing back an audio or videotape. Accuracy is a given. Veracity is a given. The courtroom camera always gets the story right.

Thank you, Mr. Chairman, for the opportunity to testify before your committee today.