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"The Federal Judiciary in the 21st Century:

Ensuring the Public's Right of Access to the Courts"

Thank you for the opportunity to testify, Mr. Chairman. My name is Jeffrey Toobin. I am a staff writer at the New Yorker magazine and the chief legal analyst at CNN. My views today are my own. I graduated from law school in 1986. After a judicial clerkship, I had the honor of being a federal prosecutor for six years - first with the Office of Independent Counsel and then as an Assistant United States Attorney in the Eastern District of New York. There is no greater privilege for a lawyer than to appear in a courtroom representing the United States.

I joined the New Yorker in 1993 and CNN in 2002. I am working on my eighth book, about the Mueller investigation. Two of my books - The Nine and The Oath - have been about the United States Supreme Court, which I have covered as a journalist for more than twenty years. I've also had the opportunity to cover many high-profile trials - including those of O.J. Simpson, Timothy McVeigh, Martha Stewart, and Michael Skakel. Some were televised. Some were not. I should note that in the course of my work in the federal courts, I have had occasion to try to rely on the PACER system many times. Frankly, PACER is a disaster, and I'd like to express my appreciation in particular to Congressman Collins, who has been such a leader in the effort to improve PACER.

My point here today is simple. The Sixth Amendment mandates "public" trials. In the twenty first century, the only

meaningful definition of 'public' is one with audio and video access. By now, we as a nation have a lot of experience with cameras in the courtroom. In the states where it's legal, and in the federal experiments, we have seen the public educated and the cause of justice advanced. Here is an example. I suspect many of you remember the case of Amadou Diallo, the unarmed immigrant from Africa who was mistaken shot and killed by four white New York City police officers in the Bronx in 1999. The judge in the case granted a change of venue to Albany, but he allowed cameras. The public saw the trial, which ended in acquittals. Before the trial, there were worries that acquittals would lead to a violent reaction in New York, as in the Rodney King case. But I think the fact that the public got to see the trial - and hear the officers' testimony for themselves - contributed to the peaceful reaction in New York, even among people who disagreed with the verdict. Cameras helped keep the peace.

At the Supreme Court, all the Justices, without regard to their ideological inclinations, are protective of the institution. They don't want to jeopardize the respect the nation has for their judgements. They are understandably cautious about making changes. But the Court has already made changes. It installed a sound system in the courtroom, it changed the arrangement of the bench, it streamed audio of its

arguments, albeit with a significant delay. At a minimum, live streaming of Supreme Court audio would be a major positive step and pose no risk at all to the customs of the Court. But live audio, which would be an improvement, is not enough. Cameras are necessary.

As for the Supreme Court, I need hardly remind this committee of the importance of their decisions. As Congressman Chabot has long reminded us, the Justices pass judgment on the constitutionality of your actions - but you are prohibited from watching them do so. That's not right. That's not fair.

Here's one more fact to consider. I've been with many people who are attending their first Supreme Court argument, and they almost all say the same thing. Wow, the Justices are impressive. They know their stuff. They are well-prepared and working hard. I suspect, if there were cameras in the courtroom, the broader public would say the same thing, and I look forward to that day.

Many thanks for this opportunity.