

SUBJECT: Prohibiting cameras in jury deliberations in civil and criminal trials

COMMITTEE: Judicial Affairs — favorable, without amendments

VOTE: 7 ayes — Hartnett, T. Smith, Alonzo, Corte, Hughes, Rodriguez, Telford
0 nays
2 absent — Solis, Wilson

SENATE VOTE: On final passage, February 27 — voice vote

WITNESSES: (*On House companion bill, HB 466:*)
For — Shannon Edmonds, Texas District and County Attorneys Association;
Bill Delmore, Harris County District Attorneys Office

Against — None

BACKGROUND: In February 2003, the Texas Court of Criminal Appeals ruled 6-3 in *Rosenthal v. Poe* that Texas law prohibits the videotaping of jury deliberations.

Code of Criminal Procedure, art. 36.22 prohibits any person from being with a jury while it is deliberating. It also prohibits people from conversing with jurors about a case except in the presence of and by permission of the court.

DIGEST: SB 164 would prohibit the use of any device to produce or make an audio, visual, or audiovisual broadcast, recording, or photograph of a jury while it was deliberating in a criminal or civil case.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: SB 164 is necessary to ensure that cameras are not allowed to film jury deliberations. Even though the Court of Criminal Appeals issued a ruling that bans cameras in the jury room, some judges mentioned in their opinions that the current statute's plain language does not prohibit this specific practice.

The Court of Criminal Appeals decision prevented State District Judge Ted Poe from following through on his announced plan to allow cameras from the PBS television show *Frontline* to film all proceedings — including jury deliberations — in the capital murder trial of 17-year-old Cedric Harrison, but the ruling is not enough. It would be best to amend Texas law specifically and plainly to outlaw cameras in the jury room, rather than rely on a court ruling interpreting current law. SB 164 would codify the Court of Criminal Appeals decision, extend it to civil trials as well, and state explicitly what always has been understood about jury deliberations — that they are private. Even with SB 164, judges would retain broad discretion over the proceedings in their courtrooms while being assured that the rights of jurors were protected.

Cameras should be banned from jury deliberations because they would pierce the “veil of confidentiality” of jury deliberations. Confidentiality is necessary to ensure that jurors can consider fully and freely and discuss a case. Jury secrecy is important to prevent tampering by outside sources, to protect jurors from harassment or retaliation, to protect the finality of the verdict, to protect freedom of debate, and to promote community trust in the jury.

These reasons trump any need to educate and inform the public, which can be accomplished in many other effective ways, such as producing a documentary about trials or juries. The chief function of a trial and of jury deliberations is to determine guilt and innocence, not to educate the public.

Cameras in the jury room would alter jurors’ behavior. It is well known that people behave differently when being filmed, and this situation would be no different. Cameras could influence jurors’ behavior and decisions, distract jurors from their deliberations, pressure them to vote in certain ways, and invade their privacy. For example, jurors in a capital murder case could be persuaded to vote in favor of a death penalty so that they would not look “out of step” with the majority of Texans who favor the death penalty or with a city in which an offender had become the object of fear or hatred. Conversely, jurors might vote against a death penalty so that they could not be accused of sending someone to his or her death.

The power to decide what to reveal about jury deliberations rightfully belongs to jurors, who can decide after a trial whether to discuss the case. This right should not be violated by allowing a camera to reveal what occurs.

Cameras sometimes are allowed in courtrooms during trials because they trials are public proceedings, whereas jury deliberations are private. Allowing cameras in jury rooms could shrink the pool of available jurors. Other ways exist to address the problem of jury misconduct.

Videotaping in other states has affected jury deliberations adversely. In Arizona, two out of three cases chosen to be broadcast have resulted in hung juries and mistrials.

OPPONENTS
SAY:

The Legislature should not change current law to ban cameras in jury rooms specifically but should give judges the discretion to allow the use of cameras if they wish. Judges should retain broad discretion over proceedings in their courtrooms, instead of reducing their discretion by outright bans.

Allowing cameras in jury rooms would educate and inform the public about the real-life workings of a trial and the administration of justice. The more the public knows about the justice system, the better off society is. Broadcasts could instill a better appreciation of the justice system. This could be especially important in death penalty cases like the one in Houston, since imposing a death sentence is such a serious event.

There is no absolute “veil of confidentiality” for jurors. The law prohibits *persons* from jury rooms to prevent jurors from being subjected to outside influences and pressures. Filming jury deliberations would not impose outside influence or pressure on jurors. The camera is an inanimate object, incapable of conversing with jurors.

Filming jury deliberations could reveal or prevent jury misconduct such as disobeying a judge’s orders or considering something that should not be considered. Cameras also could influence people to decide cases in a fairer and more just way and could reduce incidents of prejudice or unfairness.

A camera in the jury room is no different from a juror writing down what occurred and later reporting it. Cameras in the jury room could be placed unobtrusively so that jurors were not even aware of their presence.

Cameras often are allowed in courtrooms during trials, and videotaping of criminal trials, including jury deliberations, has occurred in other states such

SB 164
House Research Organization
page 4

as Arizona and Wisconsin without adversely affecting the criminal justice system.

OTHER
OPPONENTS
SAY:

SB 164 would not go far enough. It also should prohibit cameras while jurors are being examined during the voir dire process.

NOTES:

The companion bill, HB 466 by Talton, was considered in a public hearing by the House Judicial Affairs Committee on February 10 and left pending.

A related bill, HB 1213 by Wilson, would authorize judges to allow people to use devices to produce or make an audio, visual, or audiovisual broadcast, recording, or photograph of jury deliberations. The House Judicial Affairs Committee considered HB 1213 in a public hearing on March 10 and left it pending.